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Attorneys for Plaintiffs, Mack-Cali Realty Corp.; Cal-Harbor V Urban Renewal Associates LP; Cal-Harbor VII Urban Renewal Associates LP; Roseland Residential Trust; Gary Wagner; Ivan Baron; H.P. Roosevelt Urban Renewal Company LLC; Cambridge Corporate Services, Inc.; Local 621, United Construction Trades & Industrial Union; Local 365, United Employees of Service Workers; SP Plus Corporation; Los Cuernos Corp.; Exchange Place Alliance District Management Corporation; and Spartan Security Services, Inc.
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MACK-CALI REALTY CORP.; CAL-HARBOR V URBAN RENEWAL ASSOCIATES LP; CAL-HARBOR VII URBAN RENEWAL ASSOCIATES LP; ROSELAND RESIDENTIAL TRUST; GARY WAGNER; IVAN BARON; H.P. ROOSEVELT URBAN RENEWAL COMPANY LLC; CAMBRIDGE CORPORATE SERVICES, INC.; LOCAL 621, UNITED CONSTRUCTION TRADES INDUSTRIAL UNION; LOCAL 365, UNITED EMPLOYEES OF SERVICE WORKERS; SP PLUS CORPORATION; LOS CUERNOS CORP.; EXCHANGE PLACE ALLIANCE DISTRICT MANAGEMENT CORPORATION; and SPARTAN SECURITY SERVICES, INC., Plaintiffs, vs. STATE OF NEW JERSEY; CITY OF JERSEY CITY; MAYOR AND COUNCIL OF THE CITY OF JERSEY CITY; DONNA MAUER, in her Official Capacity as Director and Chief Financial Officer of the City of Jersey City; and BRIAN PLATT, in his Official Capacity as Business Administrator of the City of Jersey City, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: HUDSON COUNTY DOCKET NO. HUD-L- **Civil Action** **VERIFIED COMPLAINT**

Plaintiffs Mack-Cali Realty Corp., Cal-Harbor V Urban Renewal Associates LP, Cal-Harbor VII Urban Renewal Associates LP, and Roseland Residential Trust, each having an address of

Harborside 3, 210 Hudson Street, Suite 400, Jersey City, New Jersey 07311 (the "Mack-Cali Plaintiffs"); Gary Wagner, having an address of 6 Karen Terrace, Westfield, New Jersey 07090; Ivan Baron, having an address of 322 W. 57th Street, Apartment 45K, New York, New York 10619; H.P. Roosevelt Urban Renewal Company LLC ("H.P. Roosevelt"), having an address of 40 West 57th Street, New York, New York 10019; Cambridge Corporate Services, Inc., having an address of 26 Broadway, New York, New York 10004; Local 621, United Construction Trades & Industrial Union ("Local 621") having an address of 40-26 235th Street, Douglaston, New York 11363; Local 365, United Employees of Service Workers ("Local 365"), having an address at 1536 41st Street, Suite C6, North Bergen, New Jersey 07047; SP Plus Corporation, having an address at 200 E. Randolph Street, Suite 7700, Chicago, Illinois 60601; Los Cuernos Corp., having an address of 499 Washington Boulevard, Jersey City, New Jersey 07310; Exchange Place Alliance District Management Corporation, having an address of Harborside 2, 200 Hudson Street, Suite 801, Jersey City, New Jersey 07311; and Spartan Security Services, Inc., having an office at 417 Fifth Avenue, New York, New York 10016 (collectively, including the Mack-Cali Plaintiffs, the "Plaintiffs"), by way of complaint against the defendants, say:

OVERVIEW

1. This action is necessitated by an unconstitutional New Jersey payroll statute, and the unlawful Jersey City "payroll" ordinance it has spawned, improperly targeting non-residents' payroll of businesses with Jersey City locations. Both enactments result from an impermissible arrangement between the City of Jersey City ("Jersey City" or the "City") and the State of New Jersey (the "State"); whereby (a) the State is shirking its mandate to provide supplemental funding putatively needed for the "thorough and efficient" education required by the New Jersey Constitution, by favoring Jersey City with arbitrary and unjustifiable special legislation; (b) any shortfall would be the responsibility of the City and its residents, not the payroll of non-residents; and (c) both the State and the City are

purporting to shift the burden of educating Jersey City's schoolchildren onto the non-resident payroll of the City's businesses (including businesses that do not even own property in the City), and to expressly favor residents over non-residents.

2. That arrangement allows defendants to illegally fund the City's schools (in part) through a payroll tax unlawful in its concept and in virtually every particular--and not merely because (a) the payroll tax for local Jersey City schools is imposed exclusively on each company's non-resident employee payroll, and (b) the statute irrationally excludes more qualified municipalities.

3. At its core, defendants' conduct is not just unconstitutional and unlawful, and does not merely constitute illegal special legislation, but is also contemptuous of the New Jersey Supreme Court's authority as embodied in its directives and its decades of jurisdiction over school funding structures. Simply stated, the New Jersey Supreme Court has approved the only funding mechanisms it has found permissible to satisfy the New Jersey Constitution, after prior failures by the Legislature to adopt constitutionally acceptable enactments. Now, mirroring the State's unacceptable (and rejected) actions in Abbott XXI, the State (and City) have decided they are above the law and can go their own way. Thus, in addition to defendants' other violations of law in connection with these enactments, defendants' conduct disregards and circumvents the Supreme Court's Abbott rulings and orders. Just as this Court must obey the Supreme Court's mandates, so must the Legislature and our municipalities.

4. The statute allowing the payroll-tax ordinance complained of herein--P.L. 2018, Ch. 68 (the "Statute"), which amended N.J.S.A. 40:48C-15 and repealed N.J.S.A. 40:48C-19--violates the State Constitution in various ways, including: (a) constitutional prohibitions against special legislation; and (b) the State's T&E obligations (and resulting statutory burden) under (i) the Abbott cases (collectively, "Abbott"), and (ii) Robinson v. Cahill, the case that originally established the constitutional duty enforced in Abbott, to augment local funding for the "poorest" school districts if

needed to ensure a "thorough and efficient" education ("T&E"). The Statute thus constitutes transparently impermissible special legislation employing irrational criteria, and excluding other municipalities equally or more deserving to be in the legislative classification--all in an undisguised effort to avoid the State's T&E obligations by shifting a portion of the State's share of the burden to the payroll tax. Indeed, as detailed below, the special legislation and T&E violations are uniquely intertwined here, as both preclude the Statute's piecemeal approach.

5. The Statute was amended earlier this year as an unwise proposal implemented by the State in conjunction with Jersey City. This arose by virtue of the State (a) cutting the amount of State school aid to many municipalities, or more accurately school 'districts' (the City and more than 170 others), consisting of monies that the State putatively found to be necessary for T&E; and (b) authorizing only the City (and none of the other 170-plus municipalities similarly situated) to generate T&E education funds through a one-city payroll tax focused on non-residents--thus approaching such taxation in an unlawful and non-uniform manner. This was done instead of the constitutionally-derived, New Jersey Supreme Court approved formula for (i) local taxation for local schools based on local property tax assessments, and (ii) State "equalization" supplementation as needed, through uniform statewide taxation and a formula taking into account local property values and local income.

6. The Statute thus runs afoul of the State Constitutional mandate imposed under Robinson v. Cahill and the Abbott cases: namely, (a) the responsibility of a municipality's citizens to fund their own schools from their property tax base; and (b) the State's responsibility to ensure a thorough and efficient education (T&E) through statewide funding that equalizes any shortfall under the municipal property tax base, by virtue of a particular financially-needy town's lack of sufficient tax base. The Statute runs afoul of every element of this constitutionally mandated formula.

7. The method of funding under both the Statute and the resulting ordinance--Ordinance #18-133 (effective January 1, 2019) (the "Ordinance"), (jointly with the Statute, the "Enactments")[1]--is inherently improper: namely, (i) a payroll tax to fund education, which is itself a deviation from the only approved elements of the Abbott formula compounded by further improprieties such as (ii) having a 'one-municipality' payroll tax skewing the school funding calculation, and (iii) taxing income attributed to only *non-residents*, whereas the only benefit is for education to *residents*. The Ordinance is also unlawfully overbroad in terms of encompassing "payroll" outside the City (particularly through an arbitrary "supervisor" definition), especially given constitutional "apportionment" mandates. By virtue of Constitutional nexus and apportionment tax principles, Jersey City is not lawfully permitted to unilaterally tax such extraterritorial brick-and-mortar payroll, such as every employee (or even independent contractor) of an entity worldwide, simply because a "supervis[or]" is "in the City".

8. This violation of Constitutional principles renders unlawful and invalid both of the Enactments.

9. A statute constitutes unconstitutional "special legislation" under the State Constitution if it establishes arbitrary classifications to benefit one member (or a few members) of a 'class', without rational basis justifying the exclusion of others or the distinction made. The prohibition against special legislation is embodied not only in multiple sections of the New Jersey Constitution, but also in New Jersey's constitutional jurisprudence. Special legislation of this sort in the T&E area is particularly pernicious, since it seeks to delegate a non-delegable Statewide duty to a particular locality, which in turn shifts the burden to non-resident payroll.

[1]The Statute and Ordinance are annexed to the accompanying Certification of Paul S. Grossman ("Grossman Cert."), as Exhibits A and B, respectively.

10. As detailed below, the Statute benefits Jersey City, and Jersey City alone, for reasons that have no rational basis and are "exclusionary" in the sense noted above. Moreover, this dispute clearly raises a matter of public interest that this Court should address. The Court should invalidate the Statute as special legislation in violation of the New Jersey Constitution.

11. Indeed, the very premise (and express purpose) for the Statute--that the City should have a right to impose a "T&E" payroll tax because the City's median income **exceeds** $55,000--is itself irrational, as additional funds under Robinson/Abbott are intended for the "poorest" districts, to quote Abbott; and there are many districts more needy than Jersey City based upon (a) median income, the measure chosen by the Legislator, and (b) percentage of recent school-aid cuts.

12. The Enactments feature other overreaching provisions, such as taxing a company's employees worldwide if a "supervisor" happens to have an office in the City. The extraterritorial reach is extraordinary and arbitrary, and violates constitutional mandates for fair tax apportionment.

13. The Ordinance is even more unjustifiable than the Statute. For example, it purports to include in "payroll" an overbroad definition of "employees" that (a) goes well beyond the statutory authorization to tax true, federal-withholding employees; (b) more than that, goes well beyond any possible legitimate purpose (such a purpose might be capturing employees being unlawfully described as independent contractors to 'cheat on taxes'--the Ordinance is dramatically broader than that); (c) taxes the business for its legitimate outside independent contractors, with their own businesses and some potentially with entirely separate business structures, as though they were surreptitious payroll-level employees of the business; and (d) includes a broad array of non-employed persons who cannot fairly and rationally be included within any payroll tax.

14. This goes beyond even the Statute's authorization and is *ultra vires*.

15. Rather than sincere Enactments following logic, the law, and the Constitution, both the Statute and the Ordinance are also plainly arbitrary and capricious in an extraordinary number of regards, as detailed below.

16. The definition of "supervisor" in the Enactments is in violation of constitutional rules requiring a rational connection between a tax being imposed and the persons and entities encompassed and targeted by the tax. This prohibition is violated here in the following regards with respect to funding the Jersey City schools:

a. In terms of taxation of payroll attributable to out-of-State residents (e.g., New York citizens), there are violations of the Privileges and Immunities Clause and Commerce Clause of the United States Constitution, because (i) there is 'discrimination' between citizens of different States in terms of their financial responsibilities; (ii) interstate commerce is unduly burdened as compared to intrastate commerce, in that Jersey City employers will find it less expensive to hire residents of New Jersey (specifically, Jersey City) instead of out-of-state residents (principally New York); and (iii) there has been no effort to properly apportion the tax, in that the tax reaches geometrically beyond that portion of value that is fairly attributable to the economic activity occurring within Jersey City. There is also a violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution (and coordinate New Jersey Constitution protections) because the connection to the taxing jurisdiction is insufficient, and the employer being taxed by Jersey City could not have reasonably expected to be subject to such a tax when it commenced and structured its operations both within and outside of Jersey City.

b. By also targeting non-Jersey City resident employees who are citizens of other New Jersey municipalities, such taxation is (i) a violation of principles of taxation uniformity under the New Jersey Constitution; (ii) unconstitutionally arbitrary and capricious, as a matter of substantive due process under the New Jersey and federal Constitutions; and (iii) a violation of constitutional

rights covered by Article I, Paragraph 1 of the New Jersey Constitution [a] protecting the free flow of commerce between cities and municipalities, and [b] prohibiting this arrogation of unique power to one municipality such as Jersey City.

17. Further, the "supervisor" payroll tax under the Ordinance, which arbitrarily 'drags in' the payroll of employees and others from 'around the world', is particularly irrational and unfair *when applied to taxes to pay for local education.* This is even worse than 'dragging in' such extraterritorial funds just to pay for the general budget of a particular city. This failing pervades the various Constitutional violations pleaded in this Complaint.

18. a. This 'house of cards' structure--the combination of the Statute and the Ordinance--also violates a number of other fundamental State Constitutional and contract rights. For example, the Enactments purport to impose additional taxes upon companies (such as two of the Mack-Cali Plaintiffs, specifically, Cal-Harbor V Urban Renewal Associates LP and Cal-Harbor VII Urban Renewal Associates LP, as well as H.P. Roosevelt), whose real estate developments in the City are tied to (and were entered into in reliance upon) PILOT agreements binding upon the City. Pursuant to those Agreements, the City is precluded from increasing taxes on those companies.

b. Indeed, the essence of those PILOT agreements is that the City will not impose more tax burdens upon its contracting developers, but rather will be satisfied with the stipulated PILOT amounts during the term of the PILOT Agreement. Not only do the Enactments violate that preclusion, and not only does such violation constitute a breach of the PILOT Agreements; but in addition, the Enactments contravene the New Jersey Constitutional provision (Article V, Section VII, Paragraph 3) prohibiting the Legislature from passing any law impairing the obligation of contracts or depriving any party of any remedy for enforcing a contract which existed when the contract was made.

19. a. The Enactments are also irrational because under Abbott, the local-income factor must be truly local, not an artificial territorial 'grab' based on remote employees via a local

"supervisor". Moreover, State Constitutional principles require a substantial nexus before (if ever) taxing remote "brick and mortar" operations, and fair apportionment for those businesses.

b. More specifically, the due process and equal protection principles recognized under the United States Constitution and Article I, Paragraph 1 of the New Jersey State Constitution forbid the arbitrariness and intrastate extraterritoriality of the Tax. There are Constitutional limits on municipal extraterritorial powers, and a very limited legislative power to reasonably expand same, that have been unlawfully and geometrically exceeded.

20. The Ordinance is also *ultra vires* in multiple respects, going well beyond the Statute's authorization.

21. What is most salient about the unconstitutional arrangement the defendants have put together for funding the Jersey City schools is that it is entirely unnecessary. Although Jersey City schools lost some funding under the 2018 legislation, the truth is that they have been overfunded by the State for many years. (See Grossman Cert. Ex.) The new funding formula simply moved State aid from Jersey City to municipalities that needed it more, such as Newark, Elizabeth, Paterson, and Trenton, all of which now receive amounts closer to their T&E entitlement. More importantly, unlike those other, poorer municipalities, Jersey City has the capability to fund its schools locally without a payroll tax. Its ratables are "booming". (Id.) Moreover, each year, Jersey City receives approximately $127 million in PILOT payments ("Payments in Lieu of Taxes") from properties to which it has granted real estate tax abatements. If Jersey City used even a fraction of those payments for its schools, it would more than make up the cuts in State aid. But Jersey City refuses to do so. (Id.) Instead, Jersey City and the State resorted to the unconstitutional arrangement complained of herein.

22. Because defendants' actions to achieve an 'educational payroll tax' through the Enactments were transparently wrongful, and (with all due respect) 'slapdash' for the convenience of the moment as compared with the carefully considered Abbott structure, it is unsurprising that their

actions violate numerous complementary constitutional principles, many designed to address related evils.

PARTIES

23. a. Plaintiff Mack-Cali Realty Corporation ("MCRC") is a Maryland Corporation, with its principal place of business in Jersey City and brick-and-mortar locations in other states. MCRC owns numerous subsidiary corporations which own, lease, or manage office, commercial and residential properties located in Jersey City.

b. MCRC has employees who live within and outside of Jersey City, and who work within and outside of the City.

c. MCRC has personnel in Jersey City who could be labeled "supervisors".

24. Plaintiff Cal-Harbor V Urban Renewal Associates, L.P., is a limited partnership of the State of New Jersey, and a subsidiary of MCRC. Cal-Harbor V was formed pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. for the purpose of redeveloping property within Jersey City.

25. Plaintiff Cal-Harbor VII Urban Renewal Associates, L.P., is a limited partnership of the State of New Jersey, and a subsidiary of MCRC. Cal-Harbor VII was formed pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. in order to redevelop property within Jersey City.

26. Plaintiff Roseland Residential Trust ("RRT") is a subsidiary of MCRC. RRT was formed to own, manage, and develop MCRC's multi-family residential portfolio. RRT manages MCRC's residential portfolio within and outside Jersey City.

27. The Mack-Cali Plaintiffs, as a group, encompass:

a. Entities subject to PILOT agreements entered into by each with the City of Jersey City (the "City");

b. Employers within the City;

c. Property owners within the City;

d. Landlords to multiple (i) Jersey City businesses at present, and (ii) potential tenants not yet in place; all of which will be affected by the Proposed Ordinance, and therefore will further affect the Mack-Cali Plaintiffs in their role as landlords [a] of current tenants, and [b] seeking potential tenants now and in the future;

e. Recipients of services from licensed real estate brokers, who are independent contractors, but who would likely be classified as "employees" under the expansive terms of the Ordinance.

28. Other Mack-Cali affiliates are also being affected and may join as plaintiffs.

29. Plaintiff H.P. Roosevelt is an entity subject to and benefited by PILOT Agreements entered into with the City.

30. Plaintiff Gary Wagner is the General Counsel and Secretary of MCRC. Mr. Wagner resides at 6 Karen Terrace, Westfield Township, Union County, New Jersey. He is assigned principally to MCRC's Headquarters in Jersey City.

31. Plaintiff Ivan M. Baron is the Chief Legal Officer of RRT. Mr. Baron resides at 322 W. 57th Street, Apartment 45K, New York City, New York. He is assigned by RRT to the MCRC's Headquarters in Jersey City, New Jersey.

32. As to plaintiffs Wagner and Baron (and other parties and non-parties), the Ordinance is clearly intended (and foreseen) to affect employees and not just their employers. Otherwise, for example, the provision advantaging Jersey City resident employees in the tax calculation would be unnecessary or even counterproductive, if the Ordinance were just a tax-raising device.

33. Plaintiff Cambridge Corporate Solutions ("Cambridge") is a New York City-based provider of outsourced mailroom, security, delivery, and other services to corporate clients. This

means that Cambridge's employees will be located at the facilities of its clients, but will remain employees of Cambridge and receive their pay and benefits from Cambridge. Cambridge currently has several clients in Jersey City. Under the vague terms of the Ordinance, if Jersey City deems the employees servicing these clients to be "independent contractors" or "leased employees", their pay will unfairly be subject to the payroll tax.

34. Plaintiff Local 621 is a union of service workers headquartered in Douglaston, New York. Local 621 includes members who have entered into employment contracts with owners of buildings and building management companies in Jersey City. Many of these members reside in New Jersey municipalities other than Jersey City and others reside in states other than New Jersey. The pay of both groups is potentially subject to the payroll tax.

35. Plaintiff Local 365 is a union of apartment building workers headquartered in North Bergen, New Jersey. Local 365 represents workers located in the Newport neighborhood of Jersey City. Like Local 621, Local 365's membership consists, in part, of workers who reside outside Jersey City and, in some cases, outside of the State of New Jersey. The pay of these members will be subject to the payroll tax if it is implemented.

36. Plaintiff SP Plus Corporation ("SP Plus") is a publicly traded company headquartered in Chicago, Illinois. SP Plus is a provider of professional parking, ground transportation, facility maintenance, security and event logistics. SP Plus has locations in 75 cities throughout the United States and Canada. SP Plus operates several parking facilities in Jersey City, whose employees' pay will be subject to the payroll tax if it is allowed to be implemented.

37. Plaintiff Cuernos Corp. ("Cuernos") operates a restaurant located in Jersey City. Cuernos does not own any real property within the City, but will be subject to the payroll tax, if it is implemented, in order to benefit Jersey City Schools.

38. Plaintiff Exchange Place Alliance District Management Corporation ("Exchange Place Alliance") is the District Management Corporation responsible for operating the Exchange Place Alliance Special Improvement District. Exchange Place Alliance represents the interests of businesses within the Exchange Place Special Improvement District, all of which will be subject to the payroll tax if this Court permits it to be implemented.

39. Plaintiff Spartan Security Services, Inc. ("Spartan") is a New York-city based provider of security services, which provides such services throughout the tri-State area, including in Jersey City. Like Cambridge, its employees are located at the facilities of its clients, but they remain employees of Spartan and receive their pay directly from Spartan. Under the unique terms of the Ordinance, if Jersey City deems the employees servicing those clients to be "independent contractors" or "leased employees", their pay will unfairly be subject to the payroll tax.

40. Defendant State of New Jersey enacted the Statute in dispute in this litigation.

41. Defendant City of Jersey City is a municipal corporation of the State of New Jersey, and adopted the Ordinance in dispute in this litigation.

42. Defendant Mayor and Council of the City of Jersey City constitutes the governing body of the City.

43. Defendant Donna Mauer, sued in her official capacity as the Director and Chief Financial Officer of Jersey City, is or will be involved in collecting the payroll tax created by the Enactments.

44. Defendant Brian Platt, sued in his official capacity as the Business Administrator of the City of Jersey City, is or will be involved in collecting the payroll tax created by the Enactments.

FACTS AND LEGAL BACKGROUND COMMON TO ALL COUNTS

A. Special Legislation

45. Our State's governmental bodies were warned of the Constitutional prohibitions against "special legislation" by the New Jersey Supreme Court's decision in Town of Secaucus vs. Hudson County Board of Taxation, 133 N.J. 482 (1993), and other decisions by that Court. The present special legislation proceeds willfully and in plain violation of that case.

46. Indeed, the undisguised singling out of a City as beneficiary of the Statute, using inverted financial criteria that enforces school aid through outside sources for a single district because it exceeds a minimum income standard, renders the Statute particularly subject to question as special legislation; as do other aspects of aid to and taxation by Jersey City as detailed below. More qualified municipalities are plainly excluded.

B. School Funding

47. The Enactments impose unlawful methods for generating funds for Jersey City public schools. The lawful methods of doing so arise from a series of New Jersey Constitutional mandates emanating from the New Jersey Supreme Court, beginning with Robinson v. Cahill, 62 N.J. 473 (1971), and continuing through a series of cases generally referenced as Abbott v. Burke I-XXI; (collectively, the "Supreme Court Decisions" or "Robinson/Abbott"). The New Jersey Supreme Court, in the controlling decisions most pertinent here, Abbott v. Burke XX, 199 N.J. 140 (2009) ("Abbott XX"), and Abbott v. Burke XXI, 206 N.J. 332 (2011) ("Abbott XI")--and the statutes Abbott XX approved to implement these Constitutional mandates--has approved the following mandatory structure for school funding, which (a) carefully balances the rights of all parties, and (b) cannot be disturbed piecemeal, because doing so skews the intricate structure that has been established for the Constitutionally-requisite school funding.

48. a. Basic school funding occurs through local taxation of property, i.e., the local "property tax base". Local residents thus pay to educate their municipality's own schoolchildren.

b. By virtue of the Supreme Court Decisions, the duty to provide the T&E mandated by the New Jersey Constitution is an obligation of (a) the municipality's residents and (b) the State. The School Funding Reform Act ("SFRA") provides a formula for equalization based on the difference between what are referred to as the "Adequacy Budget" and the "Local Share", as defined below.

c. Broadly stated, the municipal residents are responsible for the cost of educating their own children, and the State (i.e., the State citizenry as a whole) must pay an "equalization" amount if the municipality is too poor to provide a thorough and efficient education through its property tax base. The State's duty is to provide funds from State revenues to supplement the revenue that can reasonably be generated by the municipality from its property tax base, if such supplementation is necessary for a proper education as determined by specific and complex formulae approved under the Supreme Court decisions. When provided from State funds, the money supplementing the local funding is a shared statewide burden. The Enactments make this a unique burden (irrationally so) on only certain State citizens affected by these Enactments (as well as non-citizens)--and those notably not benefited by the tax.

49. a. By virtue of the Supreme Court Decisions, complex structures were created to implement the Robinson/Abbott constitutional mandate, as insisted upon by that Court. Pertinently, in 2008 the SFRA, N.J.S.A. 18A:7F-51 et seq., was enacted, which embodied (in formulaic fashion) the conceptual mandate by the Supreme Court. Specifically, under N.J.S.A. 18A:7F-52, if the school district is deemed unable to reasonably fund its own school system through its property tax base, a supplemental State "equalization" amount needed by a district must be funded under the Supreme Court Decisions.

b. The equalization payment is calculated as the difference between (a) *statewide* property values and income, and (b) the property values and income of the *district's* residents.

50. In 2008, N.J.S.A. 18A:7F-52 was expressly approved by Abbott XX as part of the constitutionally mandated funding mechanism.

51. The Enactments violate (a) the aforedescribed mandates, (b) the applicable constitutional principles, (c) the Supreme Court Decisions and Orders embodying them, and (d) the complex and interrelated statutory structure that the Supreme Court finally deemed compliant with the Constitution.

C. Payroll Taxes

52. The Enactments involve problematic "payroll taxes" being expanded beyond all logical reach.

53. The concept of federal payroll-related taxes is familiar; e.g., "FICA" taxes. However, when the federal government taxes payroll, there is no problem of apportionment, apart from possible international considerations.

54. By contrast, payroll taxes imposed by a local jurisdiction on a multi-jurisdictional company run a great risk of exceeding the appropriate and Constitutionally-mandated connection to the jurisdiction and apportionment protections, if the payroll law does not carefully apply only to services performed within that jurisdiction.

55. The Enactments grossly violate the requisite connection and apportionment, by virtue of the immense extraterritorial reach of the Ordinance as drafted; whereby a single "supervisor" in Jersey City could lead to a requirement that the payrolls of tens of thousands of worldwide employees--working at brick-and-mortar operations in different cities, states and countries--yield taxes to Jersey City to fund Jersey City's schools. This patently violates the New Jersey Constitution, as well as the Privileges and Immunities and dormant Commerce Clauses of the United States Constitution.

D. Jersey City's Property Taxes

56. a. Jersey City's local property taxes are artificially depressed, contraindicating the need for the improper payroll Tax.

b. In 2018, the value of real estate in Jersey City that was subject to tax abatement was $320,932,804. (See Grossman Cert. Ex. Q.) In comparison, Hoboken, another waterfront municipality directly north of Jersey City, had zero dollars in tax abatements, while Secaucus, located directly northwest, had only $5,193,400 in real estate subject to tax abatement. (Id.) Even in Newark, the State's largest city, the value of real estate subject to tax abatement in 2017 (2018 information was not available) was only $44,484,900. (Grossman Cert. Ex. R).

c. Furthermore, only about 25 percent of the taxes Jersey City collects goes to its school budget, whereas Lakewood Township, which is having its State Aid slashed by nearly 6%, dedicates 50% of the taxes it collects to its school budget.

d. The fact is that Jersey City residents can afford to pay far more than they do via the local property tax levy, which will be $124 million for 2018-19 (the district receives a total of $410 million in state aid). The local levy is about $200 million less than the district's "local fair share"--the amount the State says local taxpayers can afford to contribute for the school budget. (See Grossman Cert., Ex. G.) Moreover, the enormous percentage of State aid (as compared to the City's school budget) renders Jersey City proportionally the most favored municipality for 'outside' school-funding support even without the new payroll tax.

57. Furthermore, the City receives approximately $127 million in PILOT payments, which is approximately $30 million **more** than it would receive from these properties in property taxes, yet refuses to share any portion of those payments with the school board for the latter's budget. (Grossman Cert. Ex. S).

58. Senator Sweeney incisively summed up the situation in a candid letter to the Mayor of Jersey City last year (Grossman Cert. Ex. S) (the "Sweeney Letter"); which we quote at length because of the devastating inconsistency between the true (and judicially noticeable) facts thus summarized and the alleged need for the present special legislation:

> Continuing to provide more than $500 million in adjustment aid to school districts that are lucky enough to have experienced sizable ratable and income growth and districts whose school population has declined is not morally justifiable when urban districts like Paterson and Trenton that are underfunded by tens of millions of dollars are being forced to lay off staff and when fast-growing districts like Kingsway Regional, Freehold and Monroe receive no additional funding for enrollment growth.
>
> As a reminder the SFRA created two school funding numbers – one for the State to fund and one that the local school district funds. The SFRA established an equitable formula for determining the "local fair share" that school districts should be paying, and as mayor of Jersey City, you are undoubtedly aware that Jersey City pays just 36% of its fair share of school funding – the fifth-lowest percentage in the state. Jersey City underfunds the local SFRA share to its schools by $202 million, and even with the $121 million in aid by which you are overfunded by the State, and to which your booming city is no longer entitled, your city is still under-adequacy by $90 million. Our legislation recognizes the need to create an exception to the cap for school districts that are under adequacy and underfunding their local fair share to enable them to meet their funding obligation.
>
> Meanwhile, the Garden State Coalition of Schools reports that more than 200 school districts around the state that are receiving less state aid than they should are overtaxing their residents more than their "local fair share" to ensure that their schoolchildren receive a quality education.
>
> Contrary to your totally unfounded contention that our Senate plan would force property tax increases in towns that are providing a quality education superior to that required by the state's "adequacy formula," our proposal would bring all of these districts to 100% funding and allow school boards to decide how much of the increased state aid to which they are entitled should be invested in their schools and how much should be returned to taxpayers in the form of property tax cuts.
>
> Most of these towns are not enjoying the economic renaissance that Jersey City and the Gold Coast have enjoyed as development continues to boom west of the Hudson. That is why the tax abatement issue is so important from the standpoint of state and local tax equity.
>
> Jersey City's municipal government, as you know, is receiving about $127 million in PILOT payments toward its municipal budget – which is actually about $30 million more than the city would have been receiving from these abated properties if no tax abatements had been awarded.

Meanwhile, the school district loses more than $50 million a year in school property tax payments it would have received from those developments.

Even if all of these tax abatements were indeed needed to ensure the economic growth and development of Jersey City – which Senator Michael Doherty pointedly questioned at Wednesday's hearing – there is a good argument to be made that all or some of the PILOT payments for those abatements should have been shared proportionately among municipal, school and county taxpayers.

With school taxes making up 25% of Jersey City property taxes, more than $30 million in PILOT payments should have gone to the schools to bring Jersey City closer to the "adequacy budget" needed to properly educate the city's schoolchildren, whose quality of education is currently being shortchanged by $90 million a year.

E. The Statute Sub Judice

1. New Jersey's Payroll Tax Laws Historically

59. The Local Tax Authorization Act, N.J.S.A. 40:48C-1 to -41, (the "Act"), was first enacted in 1970, in the aftermath of the 1967 riots in Newark, to help Newark address its continuing fiscal problems and permit Newark to levy a payroll tax. Newark's "unique" and longstanding poverty barely sustained the "classification of one" in Jersey City v. Farmer, discussed below. Moreover, Newark's payroll tax was for general municipal purposes and services arguably of benefit to employees working in Newark; and never has been a method of funding Newark's educational system.

60. N.J.S.A. 40:48C-1 was amended in 1990 to reduce the population threshold. Since 1990, the Act has provided that any municipality having a population in excess of 200,000 is authorized and empowered to enact a payroll tax ordinance.

61. Prior to that 1990 amendment to N.J.S.A. 40:48C-1, Newark was the only municipality in the State of New Jersey eligible to adopt a payroll tax. The 1990 amendment made Jersey City (and Jersey City only) also eligible.

62. Although Jersey City became eligible to adopt a payroll tax by virtue of the 1990 amendment, it did not enact a payroll tax until December 6, 1995 (the "Previous Ordinance").

63. On December 26, 1995, the day before the local payroll tax would have become effective in Jersey City, a referendum petition was filed by Jersey City residents against the Previous Ordinance. Although the petition was subsequently withdrawn, the New Jersey Supreme Court ultimately held that its filing delayed the effective date of the Jersey City Previous Ordinance until January 27, 1996. Hudson County Chamber of Commerce v. Jersey City, 310 N.J. Super. 208 (App. Div. 1997), aff'd in part o.b., 153 N.J. 254 (1998).

64. N.J.S.A. 40:48C-19 was amended on June 17, 1996 (retroactive to January 1, 1996) to add a 'longevity' requirement which excluded municipalities that had not collected payroll taxes or enacted a payroll tax ordinance within two years prior to July 1, 1995 (the "Longevity Requirement"). (See Grossman Cert., Ex. H.)

65. The 1996 amendment left Jersey City ineligible to adopt a payroll tax, and Newark remained the only eligible municipality. According to the Statement on the Assembly Bill: "The bill would preserve Newark's, but remove Jersey City's power, to impose the payroll tax". (See Grossman Cert., Ex. I.)

66. The 1996 amendment was "meant to protect businesses, like those in Jersey City, who are not accustomed to the payroll tax and would be adversely affected by the imposition of one." June 17, 1996 Governor Statement on the legislation (emphasis added). (See Grossman Cert., Ex. J.)

67. The Act defines "Payroll" in N.J.S.A. 40:48C-14 to mean "an amount equal to the total remuneration paid by employers to employees **which is subject to withholding by the employer for Federal income tax purposes** for services, other than domestic services in a private residence, if…[t]he services are performed within the municipality; or…[t]he services are performed outside the municipality and the place from which the services are supervised, is in the municipality". (emphasis added)

2. 2018 Changes

68. The New Jersey Legislature repealed N.J.S.A. 40:48C-19, effective July 24, 2018, to eliminate the Longevity Requirement.

69. N.J.S.A. 40:48C-15 was also amended effective July 24, 2018, to provide that any covered municipality (minimum 200,000 population) "may by ordinance impose and collect an employer payroll tax for general municipal purposes of the municipality, or for the purposes set forth in subsection d. of this section, at a rate of up to one percent of the employer's payroll." (N.J.S.A. 40:48C-15(a)), emphasis added.)

70. N.J.S.A. 40:48C-15(d)(1) was added, and provides that if a municipality has a median household income of $55,000 or greater, all employer payroll tax revenues collected by the municipality pursuant to such an ordinance shall be deposited into a trust fund to be used exclusively for school purposes, inclusive of charter schools.

71. N.J.S.A. 40:48C-15(c) was also added, and states that an ordinance "may provide that the employer payroll tax shall not apply to the remuneration paid by employers to employees who are residents of the municipality".

72. The Statement on the Assembly Bill introduced on June 11, 2018 to amend N.J.S.A. 40:48C-15 states in part (emphasis added below):

> Current law allows a municipality to impose and collect an employer payroll tax if it had collected the tax or adopted the tax during the two-year period prior to July 1, 1995. Newark was the only municipality to have done so, and is the only municipality currently authorized to impose and collect an employer payroll tax. This bill would allow all other municipalities with a population of at least 200,000, **presently only Jersey City**, to impose and collect an employer payroll tax.
>
> This bill would require that employer payroll tax revenues be paid to the school district on a monthly basis if the municipality has a median household income of $55,000 or more. **Presently, Jersey City is the only municipality under the bill that would be both eligible to impose an employer payroll tax and meet the median income threshold which triggers the requirement to use employer payroll tax revenues for school purposes.**

> ***** The bill would help offset certain reductions in State school aid that may be in effect after State fiscal year 2018, as is currently being considered by the Legislature in the form of Senate Bill No. 2 of 2018-2019.**

(See Grossman Cert., Ex. C.)

73. As detailed below, Jersey City, the only New Jersey municipality which meets both the population and median household income criteria of the Act, has adopted the Ordinance: (a) taking advantage of the unlawful Statute; (b) adopting a payroll tax; and (c) expressly providing further (i) that an employer shall incur no payroll tax relative to its Jersey City resident employees, and (ii) that all revenue collected from the payroll tax must be deposited in a trust fund and used in lieu of State adjustment aid and all other categories of State School aid; but also (d) unlawfully going far beyond the Statute's authorization.

E. The Ordinance Goes Far Beyond the Statute's Authorization

74. Jersey City has adopted a payroll Ordinance purportedly pursuant to, but in reality not in accordance with, N.J.S.A. 40:48C-15(c) and (d)(1).

75. While the Ordinance defines "Payroll" identically to the definition of "Payroll" in N.J.S.A. 40:48C-14 (limiting the definition to "the total remuneration paid by employers to employees which is subject to withholding by the employer for Federal income tax purposes…"), the Ordinance far more expansively defines "employees" to unlawfully expand this definition, and also creates an impermissibly broader definition of "services".

76. The Ordinance defines "employees" to include "any individual in the service of an Employer, under an appointment or contract of hire or apprenticeship, express or implied, oral or written, pursuant to which such Employer controls or has the right to control the manner and performance of the Employee's work"; and adds:

> In addition, for purposes of this tax, and irrespective of the common law tests for determining the existence of an independent contractor relationship, an individual performing work or service for compensation shall be deemed to be an Employee of the person for whom the work or service is performed unless: (1) such individual has been

> and will continue to be free from control or direction over the performance of such work or service under his/her appointment of contract of hire or apprenticeship; (2) such work or service is outside the usual course of the business of the person for which such service is performed; or (3) such individual is customarily engaged in an independently established trade, occupation, business or profession.

77. The Ordinance further provides that: "A licensed real estate salesperson is deemed an Employee of the broker under whom he or she is licensed." This directly harms MCRC, which has such salespersons, and would yield extensive and unwarranted tax liabilities for any real estate brokers in Jersey City.

78. The Ordinance also creates a category of "Leased Employees" (not authorized or defined in N.J.S.A. 40:48C-14), who are not employees of the "recipient" (i.e., the operational employer), and who provide services to the recipient employer in Jersey City, if (i) such services are provided pursuant to an agreement between the recipient employer and any other person and (ii) services are performed under the primary direction or control of the recipient employer. A "leased employee" is considered an "employee" of the recipient "employer" unless the leasing employer is including the payroll relating to such "leased employee" within its payroll tax return.

79. Also, the Ordinance overbroadly provides that an entity which contracts with any of the exempted entities is not exempt from the definition of Employee.

80. Additionally, the Ordinance unauthorizedly defines "Services" more broadly than the Statute, as follows:

> For the purposes of this chapter, an individual shall be considered in the service of an Employer if (i) he is subject to the authority of the Employer to supervise and direct the manner or rendition of his services, or he is rendering professional or technical services and is integrated into the staff of the Employer, or he is rendering, on the property used in the Employer's operations, other personal services the rendition of which is integrated into the Employer's operations, and (ii) he renders such services for compensation.

81. On the basis of the foregoing definitions, the Ordinance provides in pertinent part that except that "[a]n Employer shall incur no payroll tax relative to its Jersey City-resident Employees",

"there is hereby imposed on every Employer a tax equal to 1% of the Employers' Payroll, **on all Payrolls related to services performed**..." (Ordinance § 304-1a) (emphasis added).

82. For the reasons noted, the scope of the Ordinance has been dramatically expanded beyond the authorization provided by the Legislature in the Statute; and the Ordinance's payroll tax is unlawfully overreaching as compared to the Statute's authorized payroll tax.

F. PILOT Agreements

83. Two of the Mack Cali Plaintiffs, Cal-Harbor V Urban Renewal Associates LP and Cal-Harbor VII Urban Renewal Associates LP, and H.P. Roosevelt, as real estate developers and property owners, are parties to "PILOT Agreements" with the City that prevent the City from raising taxes on their subject properties, if only due to certain statutory mandates.

84. The Ordinance violates such Agreements.

85. The "Impairment of Contract" provision of the New Jersey Constitution also forbids such changes.

G. Relief Urgently Needed

86. Plaintiffs are being and will continue to be irreparably harmed without the Court's prompt intervention.

H. Potential Referendum

87. A referendum petition under N.J.S.A. 40:69A-185, which would suspend the Ordinance, would be mooted should plaintiffs obtain relief here. To preserve the status quo, plaintiffs seek to toll or extend the 20-day time period to file such petition until this Court rules on the merits of the permanent injunction and/or declaratory relief.

COUNT I
(Special Legislation in Violation of the N.J. Constitution)

88. Plaintiffs repeat all the above allegations as if set forth at length herein.

89. "Special legislation" is expressly forbidden by several provisions of the New Jersey Constitution:

a. Article IV, Section VII, Paragraph 9 of the New Jersey Constitution provides in part that "[t]he Legislature shall not pass any private, special, or local laws…[r]elating to taxation or exemption therefrom"; but rather "shall pass general laws" in such cases.

b. Article VIII, Section I, Paragraph 2 of the New Jersey Constitution provides that exemption from taxation may be granted only by general laws.

c. Article IV, Section VII, Paragraph 7 of the New Jersey Constitution provides that no general law shall embrace any provision of a private, special, or local character.

90. The Statute violates these State Constitutional provisions.

91. New Jersey's Constitutional jurisprudence references these prohibitions collectively as "special legislation".

92. The purported purpose of the Statute--to offset reductions in state school aid to Jersey City--is not a valid statutory purpose, in light of (a) the T&E mandate under the New Jersey Constitution and the body of mandatory case law and statutory law that has developed thereunder, and (b) the greater need by poorer districts (even Newark itself) with lower median incomes and/or less State aid, such as Camden.

93. The test for determining whether a statute constitutes special legislation is "whether the classification is reasonable, not arbitrary, and can be said to rest upon some rational basis justifying the distinction", and excludes those it should include.

94. The Statute permits a municipality to determine that the employer payroll tax not apply to remuneration to employees who are residents of the municipality, N.J.S.A. 40:48C-15(c). That provision is irrational, arbitrary, lacking in legitimate correlation with its purported purpose, lacking in external consistency or sufficient connection to Jersey City, violative of New Jersey Constitutional

principles precluding such impingements on intrastate commerce, and otherwise unconstitutional. In fact, the rational purpose is inverted, since local school funding has a connection to local residents, not out-of-City residents.

95. a. The payroll tax laws (in which the Statute appears) could, at most, apply to only two municipalities, Newark and Jersey City, in light of the minimum statutory population requirement of 200,000. However, the Statute in particular constitutes undisguised special legislation in favor of Jersey City, since the $55,000 minimum average income threshold would apply only to Jersey City and not to Newark. Yet the needier of the two is Newark, as recognized even in Jersey City v. Farmer.

b. The legislative history of the Statute confirms that its recent amendment was directed toward a class of one (Jersey City) via a distinction that has no rational basis.

c. The provision in the Statute that the use of monies derived from the payroll tax be used exclusively for school purposes if the municipality has a median household income of $55,000 or more, N.J.S.A. 40:48C-15(d)(1), excludes municipalities similarly situated, is irrational, arbitrary, has no legitimate correlation with its purported purpose, and is otherwise unconstitutional. Beyond the Newark comparison, there are numerous other school districts that are in towns with lower median incomes, lower tax bases, and higher tax rates, that do not have the option of supplementing their school budgets with a payroll tax.

96. No appropriate governmental interest is suitably furthered by the differential treatment and unsupportable combination of population and median household income classifications contained in the Statute. The Statute is also anomalous because it deviates from the recognized lack of power by a municipal governing body to 'legislate' concerning school funding matters (as opposed to the municipality's ministerial, administrative tax collection); which constitutes another unjustifiable aspect of the impermissible special legislation favoring Jersey City only.

97. The arbitrariness of the statute specially favoring Jersey City can also be summed up by the following:

a. Jersey City is already favored by receiving a disproportionately huge percentage of its school budget (as compared to other municipalities) in the form of state aid, about 60% of Jersey City's school budget, even though the City has a much higher median income ($62,739, as verified by the American Community survey 5-year estimate ("ACS Survey"), the very source used in the Statute) (see Grossman Cert., Ex. N) than many other municipalities receiving far lesser State funding and/or greater State aid cuts.

b. In 'year one' of the current round of State funding cuts, the cuts in State aid to Jersey City represent only a 0.85% reduction in its State aid, which means it is still receiving about 60% of its school budget from the State[2]. (See Grossman Cert., Ex. E.) Even in year two (i) the State is funding about 55% of Jersey City's school budget, and (ii) Jersey City is refraining from taxing its substantial tax base to fund the rest of the proportionately small budget shortfall.

c. Meanwhile, other cities that do not receive anything close to such enormous funding from the State are suffering much greater proportional cuts to State aid, such as Lakewood Township (with a population of 100,000) suffering a 5.36% reduction despite having a median income of $41,527 substantially less than Jersey City's according to the latest ACS Survey from Lakewood Township. (See Grossman Cert., Ex. N). Or to pick another example, Asbury Park City, a somewhat smaller municipality of approximately 15,000, suffering a 2.36% reduction, despite having a median household income of $43,800. (See Grossman Cert., Exs. E and P.)

[2]As shown on page 3 of Exhibit F to the Grossman Certification, Jersey City's School District has budgeted revenues of approximately $660,000,000. State Aid, as shown on page 2, amounts to about $414,053,685.

d. Because Jersey City already gets the most State aid on a pro rata basis, then the money paid for statewide taxes, part of which is earmarked for education, also disproportionately benefits Jersey City.

e. Thus, there is no rational basis for singling out Jersey City to benefit from this special legislation. Indeed, this classification is dramatically less justifiable than those in the multiple cases that have struck down other special legislation.

98. The Statute thus constitutes invalid special legislation prohibited by the New Jersey Constitution.

99. The Statute clearly raises a matter of public interest, and will adversely affect and irreparably harm the plaintiffs and many others, including direct harms and competitive disadvantage to Jersey City businesses as compared to those not subject to the tax.

100. The Statute will deter Jersey City businesses from hiring non-resident employees and from giving raises or bonuses to non-resident employees.

101. The Statute will deter businesses from locating in Jersey City, expanding their facilities in the City, or installing or keeping any arguable supervisor or high-level office there; and will incentivize businesses to leave the City.

102. The Statute will adversely impact non-residents because Jersey City businesses are deterred from hiring non-resident employees or from giving raises or bonuses to non-resident employees.

103. The Statute will deter non-residents from seeking employment in New Jersey, and will deprive Jersey City companies of that benefit and that employment pool.

104. In uniquely benefiting Jersey City, the overbroad "supervisor" section of the Statute affects other municipalities, and interferes with those other municipalities' superior right to control the taxability (in whatever form) of their local "brick and mortar" commercial activities.

105. Indeed, in City of Jersey City v. Farmer, 329 N.J. Super. 27, 42 (App. Div. 2000), certif. den. 165 N.J. 135 (2000), the Court recognized (a) the problematic nature of a municipal payroll tax ("There is an obvious State interest in strictly limiting the municipalities that collect such a tax"); and (b) the irrationality of Jersey City, even then not claiming to be anywhere near as poor as Newark, seeking the same 'dispensation' as Newark's tax (id.). All of this flies in the face of the current Statute's $55,000 income minimum. In fact, Newark's payroll tax (barely) survived "special legislation" scrutiny in Farmer precisely because of Newark's "unique financial problems" from the time of the riots, id. at 46--so "unique" as to justify the special legislative allowance of a self-admittedly problematic type of tax. The current Statute defines Jersey City as the antithesis of this classification, with a significantly larger median income than Newark. Thus, classifying Jersey City with Newark is also arbitrary.

106. For all the foregoing reasons, the Statute constitutes invalid special legislation.

WHEREFORE, plaintiffs demand judgment against defendants as follows:

A. Declaring that the Statute violates Article IV, Section VII, Paragraph 9 of the New Jersey Constitution, which provides that the Legislature shall not pass any private, special, or local laws relating to taxation or exemption therefrom;

B. Declaring that the Statute violates Article VIII, Section I, Paragraph 2 of the New Jersey Constitution, which provides that exemption from taxation may be granted only by general laws;

C. Declaring that the Statute violates Article IV, Section VII, Paragraph 7 of the New Jersey Constitution, which provides that no general law shall embrace any provision of a private, special, or local character;

D. Entering an Order temporarily, preliminarily, and permanently enjoining implementation and enforcement of the Enactments;

E. For compensatory damages, to the extent quantifiable;

F. Awarding attorney's fees, interest, and costs of suit; and

G. Providing for such other and further relief as the Court deems equitable, appropriate, and just, including a tolling or extension of the 20-day time period for filing a petition under the applicable Initiative and Referendum statute, N.J.S.A. 40:69A-185.

COUNT II
(Violation of New Jersey Constitutional Requirements for Funding "Thorough and Efficient" Education)

107. Plaintiffs repeat all the above allegations as if set forth at length herein.

108. The Enactments violate the "thorough and efficient education" ("T&E") clause of the New Jersey Constitution (Article VIII, Section IV, Paragraph 1), as detailed below. The New Jersey Constitution (Article VIII, Section IV, Paragraph 1) requires that T&E be provided to all of New Jersey's schoolchildren.

109. Plaintiffs in this matter are already paying, in all relevant jurisdictions, their fair share of taxes (for schools and otherwise); and object to the collection from them of unconstitutional taxes by an overreaching jurisdiction, such as is occurring here.

A. T&E Violation

110. By virtue of T&E constitutional law and precedent--i.e., even just those T&E principles, standing alone--the Enactments are unlawful for at least all of the following reasons:

a. Adequate T&E funds must be raised (if reasonably possible) by each municipality, supplemented if necessary by the State.

b. Constitutionally, the State must, from its general revenues, supplement the funds that can reasonably be raised from the local property tax base, so that students in "**poorer**" districts can receive as thorough and efficient an education as those in wealthier districts. This constitutional requirement was recognized in Robinson and enforced in Abbott v. Burke I-XXI.

111. This constitutional requirement was recognized in Robinson and enforced in Abbott v. Burke I-XXI.

112. The Enactments (a) violate the complex, constitutionally-compliant structure approved by the New Jersey Supreme Court for complying with T&E; and (b) do so without leave of the Supreme Court that had approved that structure after many years of supervision, fine-tuning and a stern hand by that Court.

113. The Enactments thereby distort the constitutionally required formula approved by the Supreme Court in Robinson/Abbott. Their 'education payroll tax' simply does not 'fit in with'--nor can it co-exist with--these constitutionally designed and Supreme Court-approved formulae, without disrupting the formulae.

114. The Enactments are thus fatally flawed, due to the inherent impermissibility of a 'payroll tax for education', let alone a local one, in light of the nature of the taxes and formulae that the Abbott Courts found were the appropriate ones to implement the constitutional mandate.

115. a. The Enactments also require non-resident employees (and, for example, the many Jersey City businesses that do not own property there) to eventually bear the burden of a payroll tax to support local schools from which they are not benefiting. As to the former, it is recognized that payroll taxes eventually affect the employees one way or the other. The Tax here thus clearly affects the rights of these individuals.

b. Indeed, if the present payroll Tax on employers had no palpable effect on employees, then there would not have been an exemption for local resident employees, **expressly recited by the Ordinance as benefiting such employees**. The exclusion for Jersey City resident employees was put in place expressly because the tax foreseeably affects all employees, and because it benefits local employees to be excluded. A benefit to local (resident) employees is a detriment to

others. Thus, it is indisputable that the tax on the employer was recognized to affect the employees. (All of the foregoing collectively, the "Employee Effect".)

116. The application of the "supervisor" clause to multi-jurisdictional businesses with a location (possibly a very fractional location) in the City is irrational--even more so as to those City businesses not owning property.

117. In any event, there is no rational connection between (a) those being taxed, either non-property-owning companies or, ultimately, non-resident employees, and (b) the purpose of the tax, i.e., funding local schools.

118. In addition to their unconstitutionality for other reasons, the Enactments' lack of statewide uniformity in raising T&E funds itself violates the structure established and carefully arrived at in the Supreme Court Decisions. As unlawful as a 'payroll tax for education' is, a piecemeal such tax benefitting only one municipality is that much worse.

119. The statutory formula approved by the Supreme Court as a matter of State Constitutional law has only two permissible elements: (a) local 'property-base' taxes, consisting of the "school" portions of the local property tax bills, which portions the municipality passes through administratively and turns over to the local school district; and (b) supplements ("equalization payments") from the general tax revenues of the State.

120. That structure also requires the T&E equalization monies to have been raised statewide to fulfill the State's T&E constitutional obligation. It is impermissible to have one municipality raise (*a fortiori* on the 'backs' of non-residents) a portion of the funds supposedly needed to supplement the local property tax base, in lieu of the putatively-requisite State-funded T&E monies. Doing so violates not only the State's obligations but also the only formula constitutionally approved by the Supreme Court to carry out its constitutional T&E mandate.

121. a. In addition to any federal education aid provided, (i) over five hundred New Jersey school districts will be raising education funds for their own schoolchildren through their own property tax bases; (ii) the vast majority of those districts will receive State assistance of some kind in order to ensure T&E (many will receive some amount of general T&E aid, and almost all receive some assistance from the State either in the form of general T&E aid or else specifically for special needs children, transportation or the like); (iii) 30 of those needy districts, i.e., the neediest (so-called "SDA") school districts, as well as Jersey City, will receive very substantial State equalization/supplementation payments as 'block' T&E amounts; (iv) Newark's poverty persists; and (v) yet *Jersey City alone* will putatively be allowed to raise education funds via a payroll tax targeting non-residents.

b. That payroll tax (the "Tax") is (i) contrary to the Abbott-approved formula; not to mention (ii) collected in large measure from non-Jersey City property owners; and (iii) calculated on the basis of [a] non-residents [1] without children in the school district, who [2] are separately paying for their own municipality's schools as well as 'now' paying for Jersey City's schoolchildren to be educated, which is not those non-City residents' responsibility; and [b] companies whose local "supervising" explodes a small local presence into a huge worldwide tax.

c. Thus, the targets of the Tax include (i) non-property owners in the City, and, in effect (regardless of any direct pass-through, were it permissible); (ii) their non-resident employees; and (iii) entities unlucky enough to have an arguable "supervisor" in Jersey City. They will unfairly pay both (i) their just share of taxes elsewhere, and (ii) the unjust additional amount due under or caused by the Ordinance, not to mention (iii) their share of State taxes funding the State equalization aid. To say that this is unfair and non-uniform as applied to the 'victims' of the Tax is a gross understatement.

B. The "Local Share" Conundrum Created by the Enactments

122. As noted above, the district's contribution to its schoolchildren's educational cost ("Local Share") is one of the two permissible elements of school funding (along with supplemental State equalization amounts). There are two variables that the State can properly consider under Abbott (and under the SFRA structure that the New Jersey Supreme Court has incorporated into its constitutional jurisprudence) in deriving a "Local Share": property values and the income of residents. The formula consists of the use of multipliers, and is basically [Local Property Value*Property Rate Multiplier) + (Local Income*Income Rate Multiplier)] divided by "2". See N.J.S.A. 18A:75-52, which is part of the SFRA.

123. Under Abbott, the local district first develops an "Adequacy Budget" for the State's approval, against which the State can (a) compare the Local Share, and (b) determine what funding is needed overall to adequately provide T&E for the district.

124. Under the SFRA, the Local Share is subtracted from the Adequacy Budget to generate the so-called "adjustment aid" ("State Share") from the State to the municipality. The properly-calculated "Local Share" is thus necessary to determine the constitutionally-required State Share.

125. a. The Tax interferes with this intricate constitutional system. The Statute suggests that the Tax is designed to supplement the State Share. This would be impermissible even standing alone--and worse here, since the Tax is raised locally (and enforced 'locally' in some sense; certainly less than uniformly throughout the State, as required). As detailed below, if deemed to supplement the "Local Share" the Tax is equally impermissible. In either event, the State is thereby dramatically deviating from the "constitutional formula", to benefit only one SDA district.

b. i. In the latter regard, if this 'side funding' Tax is actually intended to supplement Jersey City's Local Share, then the State is also [a] improperly treating the City uniquely (despite the City's self-defined wealth in the Enactments)--thereby [b] disrupting the State Share

formula, [c] "specially" favoring the City, and [d] on a related issue, allowing the City to do what the New Jersey Department of Education has historically not permitted to happen: locally raising more than the Local Share.

ii. Thus, even if the Tax were otherwise valid (not so), it will unlawfully increase the amount being raised only for Jersey City.

126. In 2009, Abbott XX found the SFRA formula to be constitutional and an integral part of implementing the Robinson/Abbott constitutional mandate. The Abbott cases make it clear that the formula cannot be tinkered with by piecemeal legislation. Indeed, in 2011 the Abbott XXI Supreme Court upbraided the State for enactments that did not live up to the State's funding formula 'word' with regard to the SDA districts.

127. In this regard, in Abbott XXI the State argued that when it comes to *funding*, the Supreme Court has to defer to the appropriations authority of the Legislature by virtue of another New Jersey Constitutional provision, the "Appropriations Clause". In substance, the Court held that the Appropriations Clause, a general funding clause, was not on equal footing with the substantive T&E requirement; and created no bar to judicial enforcement when (a) the shortfall implicated a substantive Constitutional obligation, and (b) the formula being undermined (just as the Statute *sub judice* undermines same) was one which the State itself had created. Simply stated, some statutes are preeminent over others if they have a substantive constitutional dimension.

128. The Enactments are thus inconsistent with the SFRA formula, which has been constitutionally approved. Moreover, there is no constitutionally permissible reason that Jersey City can stand on a different funding foundation than every other school district including the other SDA districts.

129. The evolution of the SFRA is important to note. It was only after many unacceptable actions on the subject by the Legislature, each found unsatisfactory by the New Jersey Supreme Court

in the earlier Abbott cases, that in the latest Abbott decisions that Court has expressly approved the Legislature's SFRA statutory formulae as correctly embodying the Robinson/Abbott constitutional mandate--on the condition that the State honor that formula. The Statute does not honor that formula.

130. By contrast, statewide funds raised erratically in local fashion through the subject payroll Tax, even if randomly 'touching' other municipalities through a non-resident-oriented tax, cannot lawfully be used to supplement the State's share; yet, ostensibly that is the purpose of the Statute and Ordinance. Indeed, based upon its own stated purpose, the Statute is irrational, since it purports to achieve State funding through local taxation.

131. Under our State's constitutional separation of powers, by virtue of its constitutional rulings the New Jersey Supreme Court is in charge of school funding and its constitutionally permissible methods. That Court has made this clear (a) from the time it decided Robinson as a constitutional 'override', intended to be supreme over any legislative or local enactments, (b) to the time that Court finally approved the current statutory structure that it finds constitutionally adequate, while simultaneously decrying any efforts by the Legislature to interfere with this structure that Court has required.

132. While the SFRA may have been legislatively fine-tuned from time to time, any material changes would be *ultra vires* to the extent they would exceed or deviate from the New Jersey Supreme Court approvals. A payroll tax of the sort at issue here, being 'thrown into the mix' as a new school funding mechanism, most certainly would constitute such a material change, and thus a material violation of the structure approved by the New Jersey Supreme Court.

133. The Enactments are therefore invalid under New Jersey "T&E" Constitutional requirements.

WHEREFORE, plaintiffs demand judgment against defendants as follows:

A. Declaring that the Enactments violate Article VIII, Section IV, Paragraph 1 of the New Jersey Constitution, the "Thorough and Efficient Education" Clause;

B. Entering an Order temporarily, preliminarily, and permanently enjoining implementation and enforcement of the Enactments;

C. For compensatory damages, to the extent quantifiable;

D. Awarding attorney's fees, interest, and costs of suit; and

E. Providing for such other and further relief as the Court deems equitable, appropriate, and just, including a tolling or extension of the 20-day time period for filing a petition under the applicable Initiative and Referendum statute, N.J.S.A. 40:69A-185.

COUNT III
(Lack of Required Uniform Taxation under the State Constitution)

134. Plaintiffs repeat all the above allegations as if set forth at length herein.

135. The "Uniformity Clause" of the New Jersey Constitution, Article VIII, Section I, Paragraph 1(a), requires that property "shall be assessed for taxation under general laws and by uniform rules", and that real property "shall be assessed according to the same standard of value... at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district."

136. Article VIII, Section I, Paragraph 2 of the New Jersey Constitution bars any system of classifying property for assessment purposes unless the classifications are expressly permitted by an authorization in the New Jersey Constitution approved by the voters in a general election.

137. The Uniformity Clause of the New Jersey Constitution also has a provision for dealing with exemption from taxation. Tax exemptions must be authorized by general laws. Article VIII, Section I, Paragraph 2 also precludes legislative repeal of the exemption of property used exclusively for religious, educational and charitable purposes.

138. A number of provisions of the New Jersey Constitution authorize tax deductions, rebates, exemptions or abatements in specific circumstances: for example, the dedication of personal income tax, or portions thereof, for reducing or offsetting property taxes (Article VIII, Section I, Paragraph 7); the maintenance of the transportation system by the dedication of taxes on motor fuels and petroleum products (Article VIII, Section II, Paragraph 4); dedicating a portion of corporate tax business revenues for environmental remediation (Article VIII, Section II, Paragraph 6); dedicating a portion of sales and use tax for a special account to be appropriated for acquisition and development of recreational and conservation lands or for farmland and historic preservation (Article VIII, Section II, Paragraph 7); and dedicating the entire net proceeds of the state lottery for state institutions and state aid for education (Article IV, Section VII, Paragraph 2).

139. Thus, whenever the Legislature has required that the dedication of a tax or portion of a tax be devoted for a specific purpose, such as education, there has been a referendum approved by the voters and a constitutional amendment expressly authorizing the dedication.

140. The payroll tax authorized by the Ordinance constitutes an improper effort to supplement the real estate taxes assessed on Jersey City property owners in violation of the Uniformity Clause of the New Jersey Constitution, in that it results in the properties owned by some of the plaintiffs (and by others) not being assessed under a general law and by uniform rules, and not being assessed at the same standard of value regardless of the general tax rate of the Jersey City taxing district in which the properties are situated, but rather use of a payroll tax for the goals of the property tax as an "end-run" around (*inter* alia) the uniformity requirement thereof.

141. Furthermore, the contradiction created by (a) the assessment of the payroll taxes on employers whose employees work in Jersey City, but are non-residents, or whose employees neither live nor work in Jersey City but are supervised by a Jersey City manager, and (b) the exemption from the payroll tax of employers whose employees are Jersey City residents, violates the constitutional

requirement that tax exemptions (including the payroll Tax intended as a surrogate for property taxes) must be accorded by general laws except if the employer, corporation or association is organized as a not-for-profit entity and operated exclusively for religious, educational or charitable purposes.

142. Accordingly, the tax exemption authorized by applicable sections of the Enactments is not the result of a uniform or general law but a special law, and, therefore, violates the New Jersey Constitution.

143. The payroll tax authorization that requires that the taxes be collected and deposited into a trust fund for the benefit of public schools in Jersey City, in order to offset a reduction in state aid to the Jersey City School District, violates the Uniformity Clause in the New Jersey Constitution.

144. The use of a payroll tax for an obligation that must be funded by property taxes does not save the tax from its non-uniformity defects.

WHEREFORE, plaintiffs demand judgment against defendants as follows:

A. Declaring that the Enactments violate Article VIII, Section I, Paragraph 1(a) of the New Jersey Constitution, the "Tax Uniformity" Clause, which requires that taxes be assessed under general laws and by uniform rules and that real property be assessed according to the same standard of value at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district;

B. Declaring that the Enactments violate Article VIII, Section I, Paragraph 2 of the New Jersey Constitution, which requires that all tax exemptions be granted by general law;

C. Declaring that the Enactments are void *ab initio* because the payroll tax for Jersey City school purposes was not authorized by a referendum of the voters at a general election and an amendment of the New Jersey Constitution, as required by Article VIII, Section I, Paragraph 2 of the New Jersey Constitution.

D. Entering an Order temporarily, preliminarily, and permanently enjoining implementation and enforcement of the Enactments;

E. For compensatory damages, to the extent quantifiable;

F. Awarding attorney's fees, interest, and costs of suit; and

G. Providing for such other and further relief as the Court deems equitable, appropriate, and just, including a tolling or extension of the 20-day time period for filing a petition under the applicable Initiative and Referendum statute, N.J.S.A. 40:69A-185.

COUNT IV
(Violations of New Jersey Constitution Article I, Section 1)

145. Plaintiffs repeat all the above allegations as if set forth at length herein.

146. Article I, Paragraph 1 of the New Jersey Constitution provides that "[a]ll persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness." As detailed below, this clause has been broadly interpreted as intended to parallel and protect all basic personal or natural rights protected by the federal Constitution.

147. Article I, Paragraph 1 of the New Jersey Constitution includes the right to equal protection, the right to substantive and procedural due process, and the right to employment opportunity.

148. Implied in Article I, Paragraph 1 of the New Jersey Constitution also is a right to be free from economic discrimination in intrastate commerce.

149. The Enactments deny plaintiffs equal protection under the law, including but not limited to the following arbitrary distinctions:

a. Businesses located in Jersey City are disadvantaged by the Enactments as compared to comparable business outside the City, due to the extra burden of the Tax.

b. Employees of Jersey City businesses outside of Jersey City will (for the reasons noted in this Complaint, including the "Employee Effect" as defined above) be disadvantaged as compared to employees who live in Jersey City.

c. For the reasons detailed in this Complaint, the Enactments also violate substantive and procedural due process as protected under Article I, Paragraph 1 of the New Jersey Constitution.

150. Article 1, Paragraph 1 of the New Jersey Constitution protects inter-municipality commerce from discrimination (i.e., intra-municipality commerce must be treated the same as inter-municipality commerce), whether in-State or otherwise.

151. The Enactments discriminate against inter-municipality competition (both interstate and intrastate)--thus prejudicing both businesses and their employees--in that the Enactments:

a. will deter Jersey City businesses from hiring non-resident employees and from giving raises or bonuses to non-resident employees;

b. will impact adversely non-residents because Jersey City businesses are deterred from hiring non-resident employees or from giving raises or bonuses to non-resident employees;

c. will deter businesses from expanding operations or establishing supervisory offices in Jersey City, and incentivize them to leave; and

d. will deter non-residents from seeking employment in New Jersey.

152. Article 1, Paragraph 1 of the New Jersey Constitution protects individuals from economic discrimination in pursuit of one's livelihood.

153. The Enactments violate this protection by:

a. denying the pursuit of one's livelihood free from economic discrimination; and

b. creating an irrational exemption from taxes that discriminates against employers who hire non-resident employees.

WHEREFORE, plaintiffs demand judgment against defendants as follows:

A. Declaring that the Enactments violate Article I, Paragraph 1 of the New Jersey Constitution, which provides that all persons are by nature free and independent, and have certain natural and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness;

B. Entering an Order temporarily, preliminarily, and permanently enjoining implementation and enforcement of the Enactments;

C. For compensatory damages, to the extent quantifiable;

D. Awarding attorney's fees, interest, and costs of suit; and

E. Providing for such other and further relief as the Court deems equitable, appropriate, and just, including a tolling or extension of the 20-day time period for filing a petition under the applicable Initiative and Referendum statute, N.J.S.A. 40:69A-185.

COUNT V
(Violation of Article VIII, Section II, Paragraph 8 of the New Jersey Constitution Precluding Wage/Salary Assessments for Present Purposes)

154. Plaintiffs repeat all the above allegations as if set forth at length herein.

155. The Enactments violate Article VIII, Section II, Paragraph 8 of the New Jersey Constitution by seeking "assessments" (or "contributions") "from employers" "on" and "measured by" "the wages or salaries paid by the employers to the employees", "for [a]…purpose other than providing and administering benefits to employees and their families or dependents".

156. The Interpretive Statement that led to the passage of the official ballot, resulting in adoption of Article VII, Section II, Paragraph 8, confirms that it is applicable here:

> This proposed constitutional amendment prohibits the collection by the State of **assessments based on employee wages and salaries** for any purpose except paying employee benefits (or making other employee-authorized or federally required payments, in the case of the State's own employees), dedicates all contributions made to the unemployment compensation fund, the State disability benefits fund, or any other employee benefit fund, and all returns on investments of those contributions, to the

> purpose of that fund, and prohibits the use of those contributions or returns for any other purpose. The requirements of this proposed amendment do not apply to the gross income tax, which is exclusively dedicated by the ...Constitution to the purpose of reducing or offsetting local property taxes. [emphasis added]

(Grossman Cert. Ex. L).

157. The Statute effectively constitutes an "assessment" *by the State*, even though it is further implemented by the Ordinance. Moreover, the payroll-tax funds are undisguised surrogates for the State's T&E obligations.

158. a. Article VIII, Section II, Paragraph 8 itself makes it clear that the terms "assessments" and "contributions" encompass taxes; since it was deemed necessary in the drafting thereof to expressly exclude (from the constitutional prohibition) certain "taxes" such as state income taxes on personal incomes under Article VIII, Section I, Paragraph 8 of the New Jersey Constitution, used "for the purpose of reducing or offsetting property taxes". (Note that even if the latter exception would otherwise be arguably applicable in some sense--not so, as this is not an "income tax"--the tax sub judice is not "levied on" personal income of individuals but rather on businesses, even though there will be an effect on the individuals.)

b. It was deemed necessary by the drafters of this Constitutional provision to expressly exclude this and 'other' tax exceptions (such as taxes collected by the State for the benefit of the federal government and certain other amounts) in recognition of the fact that otherwise, all taxes are encompassed in the provision.

159. For these reasons, a tax such as the present one (the one putatively authorized by the Enactments), measured by the wages and salaries of employees, is impermissible unless the money is dedicated to the express purposes set forth in the Article VIII, Section II, Paragraph 8. Because that is not the case with respect to the Enactments, those Enactments are void as violative of the New Jersey Constitution.

160. For these reasons, the Enactments should be invalidated as violative of Article VIII, Section II, Paragraph 8 of the New Jersey Constitution.

WHEREFORE, plaintiffs demand judgment against defendants as follows:

A. Declaring that the Enactments violate Article VIII, Section II, Paragraph 8 of the New Jersey Constitution;

B. Entering an Order temporarily, preliminarily, and permanently enjoining implementation and enforcement of the Enactments;

C. For compensatory damages, to the extent quantifiable;

D. Awarding attorney's fees, interest, and costs of suit; and

E. Providing for such other and further relief as the Court deems equitable, appropriate, and just, including a tolling or extension of the 20-day time period for filing a petition under the applicable Initiative and Referendum statute, N.J.S.A. 40:69A-185.

COUNT VI
(Violations of the Privileges and Immunities Clause)

161. Plaintiffs repeat all the above allegations as if set forth herein at length.

162. The Privileges and Immunities Clause of the United States Constitution (Article IV, Section 2, Clause 1) provides that the citizens of each State shall be entitled to all Privileges and Immunities of citizens in the several States.

163. The pursuit of an occupation outside one's home State is a right Constitutionally protected under the Privileges and Immunities Clause.

164. Exemption for out-of-state residents from higher taxes than are paid by in-State citizens is also a right Constitutionally protected under the Privileges and Immunities Clause.

165. The Statute authorizes a municipality which meets certain population and median household income criteria to adopt a payroll tax ordinance that does not apply to the remuneration paid by employers to employees who are residents of the municipality. Jersey City has adopted such an

Ordinance, which Ordinance expressly provides that an employer shall incur no payroll tax relative to its Jersey City resident employees.

166. The Statute and Ordinance violate the Privileges and Immunities Clause of the United States Constitution. More particularly, the Statute and the Ordinance:

a. Deny the pursuit of one's livelihood free from economic discrimination; and

b. Create an irrational exemption from taxes that discriminates against employers who hire non-resident employees.

167. There is no legitimate correlation between the assessment of a payroll tax on the remuneration paid by Jersey City employers to non-resident employees and the purpose for which the monies generated by the payroll tax may be used, i.e., for local Jersey City school purposes that do not benefit non-residents in any way.

168. The Statute and Ordinance:

a. will deter Jersey City businesses from hiring non-resident employees and from giving raises or bonuses to non-resident employees.

b. will adversely impact non-residents because Jersey City businesses are deterred from hiring non-resident employees or from giving raises or bonuses to non-resident employees.

c. will deter businesses from expanding operations or establishing supervisory offices in Jersey City, and incentivize them to leave.

d. will deter non-residents from seeking employment in New Jersey.

169. Given Jersey City's close proximity to New York City, many New York citizens, not resident in New Jersey, work in Jersey City or seek employment in Jersey City.

170. Plaintiffs have been harmed by the Statute and Ordinance as violations of Privileges and Immunities Clause, due to the significant effect upon them.

171. For these reasons, the Enactments violate the Privileges and Immunities Clause of the United States Constitution.

WHEREFORE, plaintiffs demand judgment against defendants as follows:

A. Declaring that the Enactments violate Article IV, Section 2, Clause 1 (the Privileges and Immunities Clause) of the United States Constitution;

B. Entering an Order temporarily, preliminarily, and permanently enjoining implementation and enforcement of the Enactments;

C. For compensatory damages, to the extent quantifiable;

D. Awarding attorney's fees, interest, and costs of suit; and

E. Providing for such other and further relief as the Court deems equitable, appropriate, and just, including a tolling or extension of the 20-day time period for filing a petition under the applicable Initiative and Referendum statute, N.J.S.A. 40:69A-185.

COUNT VII
(Violation of the Dormant Federal Commerce Clause)

172. Plaintiffs repeat all the above allegations as if set forth herein at length.

173. The Commerce Clause of the United States Constitution (Article I, Section 8, Clause 3) ("Commerce Clause") provides that Congress shall have power to regulate commerce among the several States.

174. The dormant Commerce Clause, recognized in Constitutional jurisprudence, directly limits the power of the States to discriminate against interstate commerce, and prohibits regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.

175. The Statute authorizes a municipality which meets certain population and median household income criteria to adopt a payroll ordinance that does not apply to the remuneration paid by employers to employees who are residents of the municipality. Jersey City has adopted such an

Ordinance, which expressly provides that an employer shall incur no payroll tax relative to its Jersey City resident employees.

176. The Statute and the Ordinance thereby violate the Commerce Clause of the United States Constitution. More specifically, the Statute and the Ordinance:

a. discriminate against non-residents; and

b. do not advance a legitimate purpose that cannot be adequately served by reasonable nondiscriminatory alternatives.

177. The Statute and Ordinance also attempt to tax the out-of-state activities of employees who are "supervised" from Jersey City. However, there is no effort to apportion the payroll tax on the remuneration paid by Jersey City employers to non-resident employees so that the tax reflects the actual amount of economic activities occurring in Jersey City.

178. The Statute and the Ordinance:

a. will deter Jersey City businesses from hiring non-resident employees and from giving raises or bonuses to non-resident employees.

b. will adversely impact non-residents, because Jersey City businesses are deterred from hiring non-resident employees or from giving raises or bonuses to non-resident employees.

c. will deter businesses from expanding operations or establishing supervisory offices in Jersey City, and incentivize them to leave.

d. will deter non-residents from seeking employment in New Jersey.

179. Given Jersey City's close proximity to New York City, many New York citizens, not resident in Jersey City, work in Jersey City or seek employment in Jersey City.

180. Plaintiffs been harmed by the Statute and the Ordinance as a violation of the dormant Commerce Clause, due to the significant effect upon them.

181. For these reasons, the Enactments violate the Commerce Clause.

WHEREFORE, plaintiffs demand judgment against defendants as follows:

A. Declaring that the Enactments violate Article I, Section 8, Clause 3 (the Commerce Clause) of the United States Constitution;

B. Entering an Order temporarily, preliminarily, and permanently enjoining implementation and enforcement of the Enactments;

C. For compensatory damages, to the extent quantifiable;

D. Awarding attorney's fees, interest, and costs of suit; and

E. Providing for such other and further relief as the Court deems equitable, appropriate, and just, including a tolling or extension of the 20-day time period for filing a petition under the applicable Initiative and Referendum statute, N.J.S.A. 40:69A-185.

COUNT VIII
(*Ultra Vires* Ordinance Exceeding Statutory Authorization and Municipal Powers)

182. Plaintiffs repeat all the above allegations as if set forth at length herein.

183. Municipalities derive their power from the State and can exercise only such power as they are granted by the Legislature and the New Jersey Constitution.

184. Any exercise of a delegated power by a municipality in a manner not within the purview of the governing statute is arbitrary and capricious, *ultra vires* of the delegated powers, and void.

185. However unjustifiable its enactment was, the Statute's language was limited in some respects, and putatively authorized a municipality's imposition of a payroll tax based only on remuneration paid to employees subject to withholding by the employer for Federal income tax purposes.

186. The Ordinance is *ultra vires*, in that it vastly exceeds the authorized scope of the Statute. Specifically, the Ordinance expands beyond the Statute's authorization to include (as subject to the Ordinance) not only employees who are subject to withholding by the employer for Federal

income tax purposes--i.e., actual employees as statutorily intended--but also, among others, independent contractors, contract employees, licensed real estate salespersons, and leased employees.

187. The Ordinance goes on to impose a payroll tax "on all Payrolls related to services performed" without the limitations contained in the Statute.

188. The vastly expanded definitions of employees, employers, and services in the Ordinance exponentially multiply the harm to plaintiffs. For example, the Ordinance applies to monies paid to non-residents of Jersey City, who could be located in another municipality, another county, another state, or even another country.

189. This *ultra vires* expansion also multiplies the cost of compliance by businesses, as opposed to simply reflecting 'payroll'.

190. The Ordinance is *ultra vires* in yet another regard:

a. § 304-21 of the Ordinance (entitled "Prohibition Against Deduction or Withholding") provides that: "No Employer shall deduct or withhold any amount from the remuneration payable to an Employee because of the tax imposed by this article."

b. Notably, this provision does not appear in the enabling Statute, perhaps because it cannot be reasonably monitored and, in any event, wrongfully impinges on the rights of employers.

191. Jersey City has exceeded its delegated authority under the Statute and ignored the plain language of the Statute.

192. Beyond the Ordinance unlawfully going beyond the Statute, the Ordinance is also invalid because Jersey City lacks the power for such extraterritorial levies, especially in light of (a) the invalid and overreaching nature of the Statute, and (b) the lack of legitimate apportionment.

193. Finally, the Ordinance is *ultra vires* because it was improperly enacted, in that it was moved for consideration by the City's business administrator, and not by a council member. Jersey City Code of Ordinances, Chapter A350-24-Rule XXII, Section D provides that "Ordinances,

resolutions, or other matters requiring action by the Council shall only be introduced by a member of council and that "[w]hen a council member introduces an ordinance or resolution, his or her name shall appear on the same." (See Grossman Cert., Ex. K.)

194. For all these reasons, the Ordinance is *ultra vires* and should be invalidated.

WHEREFORE, plaintiffs demand judgment against the municipal defendants as follows:

A. Declaring that the Ordinance is *ultra vires*;

B. Entering an Order temporarily, preliminarily, and permanently enjoining implementation and enforcement of the Ordinance;

C. For compensatory damages, to the extent quantifiable;

D. Awarding attorney's fees, interest, and costs of suit; and

E. Providing for such other and further relief as the Court deems equitable, appropriate, and just, including a tolling or extension of the 20-day time period for filing a petition under the applicable Initiative and Referendum statute, N.J.S.A. 40:69A-185.

COUNT IX
(Vagueness/Due Process Under the New Jersey and United States Constitutions)

195. Plaintiffs repeat all the above allegations as if set forth herein at length.

196. As a matter of New Jersey and federal Constitutional law, a vague ordinance is unenforceable and is violative of due process.

197. The Ordinance is vague and ambiguous.

198. The Ordinance fails to provide a person of ordinary intelligence a reasonable opportunity to know what is prohibited.

199. The Ordinance fails to provide explicit or sufficient standards to guide compliance.

200. The Ordinance vaguely and ambiguously defines "employees" to include (as hereinafter quoted) "any individual in the service of an Employer, under an appointment or contract of

hire or apprenticeship, express or implied, oral or written, pursuant to which such Employer controls or has the right to control the manner and performance of the Employee's work"; and adds:

> In addition, for purposes of this tax, and irrespective of the common law tests for determining the existence of an independent contractor relationship, an individual performing work or service for compensation shall be deemed to be an Employee of the person for whom the work or service is performed unless: (1) such individual has been and will continue to be free from control or direction over the performance of such work or service under his/her appointment of contract of hire or apprenticeship; (2) such work or service is outside the usual course of the business of the person for which such service is performed; or, (3) such individual is customarily engaged in an independently established trade, occupation, business or profession.

201. Apparently inconsistently, the Ordinance defines "Payroll" as "the total remuneration paid by an Employer to Employe[es] which is subject to withholding by the Employer for Federal income tax purposes...").

202. The Ordinance also vaguely and ambiguously creates a category of "Leased Employees", who are not employees of the recipient employer and who provide services to the recipient employer in Jersey City if (a) such services are provided pursuant to an agreement between the recipient employer and any other person and (b) services are performed under the primary direction or control of the recipient employer.

203. The Ordinance vaguely and ambiguously provides that an entity which contracts with any of the entities exempted under the enabling statute is not exempt from the definition of Employer.

204. "Services" are vaguely and ambiguously defined in the Ordinance as follows:

> For the purposes of this chapter, an individual shall be considered in the service of an Employer if (i) he is subject to the authority of the Employer to supervise and direct the manner or rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the Employer, or he is rendering, on the property used in the Employer's operations, other personal services the rendition of which is integrated into the Employer's operations, and (ii) he renders such services for compensation.

205. The Ordinance vaguely and ambiguously provides that except that "[a]n Employer shall incur no payroll tax relative to its Jersey City-resident Employees", "there is hereby imposed on every Employer a tax equal to 1% of the Employers' Payroll, on all Payrolls related to services

performed....", making it unclear as to what "Payrolls" or payroll elements are covered and how they are defined by the Ordinance.

206. The Ordinance's definition of "Supervisor" is vague and ambiguous, and arguably could extend as high as the President of the company; who, if 'sitting' in Jersey City, could thus (depending upon how the language is interpreted) arguably require a company's payment of a payroll tax for its entire employee base throughout the world. A similar problem arises with 'lesser' officers and managers.

207. Another level of unconstitutional vagueness arises from the question of how much time (or other measure of activity) the Supervisor has to spend in Jersey City in order to render the entire contingent of employees arguably "supervised" by him/her being subject to the Ordinance tax. A 'wrong guess' on this could mean the difference between being punished for not reporting a multi-thousand employee worldwide contingent versus reporting none at all. This sort of vagueness and ambiguity is constitutionally unacceptable.

208. a. Legally impermissible ambiguity can arise when, as here, a statute or ordinance is subject to various plausible interpretations or when literal interpretation of the statute or ordinance would lead to a result that is inherently absurd or at odds with either public policy or the overarching statutory scheme of which it is a part. Cashin v. Bello, 223 N.J. 328, 336 (2015).

b. The serious nature of the consequences of 'guessing wrong' about one's responsibilities under the subject enactment is another factor.

c. Such factors exist here. The definitions of "employee", "services" and "supervisor" are not only manifestly vague and ambiguous, but the former two terms are apparently inconsistent with the definition of "payroll" in the Ordinance and in the enabling Statute. Equally vague and ambiguous is the ordinance's provision that except that an employer shall incur no payroll

tax relative to its Jersey City-resident Employees, "there is hereby imposed on every Employer a tax equal to 1% of the Employers' Payroll, on all Payrolls related to services performed . . . ."

d. Further, the ambiguity in the Ordinance magnifies the absurdity of the of the Ordinance, as the consequences of guessing as to the meaning of the Ordinance incorrectly could be dire. For example, Section 19.4 of the Ordinance allows the Chief Financial Officer of Jersey City to sue any company that she determines has not paid taxes that are due. Further, that Section provides that if the City is successful in its suit, it can recover not only the unpaid tax but also "interest at the rate of eight (8%) per annum on the first $1,500 of the delinquency and eighteen (18%) per annum on any amount in excess of $1,500." Given that the City, pursuant to that same Section, can wait up to three years to bring suit, the financial consequences of guessing wrong as to the meaning of the Ordinance could be catastrophic; not to mention the disruption and reputation impairment of a potential three-year audit as well.

209. Further, Section 19.4 of the Ordinance states that if the City determines that a company failed to make the proper reports under the Ordinance, or refused to permit an officer or agent of the City to inspect its books records or papers, or knowingly made an incomplete disclosure of the tax owing--disagreements and disputes that could well occur in light of the Ordinance's mis-usage of terms such as "supervisor" and "independent contractor"--then individuals at that company can be convicted of a crime, fined up to $2,000 and sent to prison for up to 90 days. This is clearly a draconian result for failing to correctly interpret an unclear ordinance.

210. The vagueness and ambiguity of the Ordinance impact on constitutional interests, as detailed throughout this Complaint, and as a matter of due process.

211. For these reasons, the Ordinance should be invalidated as unconstitutionally vague and ambiguous.

WHEREFORE, plaintiffs demand judgment against the municipal defendants as follows:

A. Declaring that the Ordinance is vague and violative of due process;

B. Entering an Order temporarily, preliminarily, and permanently enjoining implementation and enforcement of the Ordinance;

C. For compensatory damages, to the extent quantifiable;

D. Awarding attorney's fees, interest, and costs of suit; and

E. Providing for such other and further relief as the Court deems equitable, appropriate, and just, including a tolling or extension of the 20-day time period for filing a petition under the applicable Initiative and Referendum statute, N.J.S.A. 40:69A-185.

COUNT X
(Arbitrary and Capricious Statute)

212. Plaintiffs repeat all the above allegations as if set forth at length herein.

213. Under New Jersey law, including Bd. of Educ. v. Caffiero, 86 N.J. 308, 317-18 (1981), an arbitrary and capricious statute cannot stand, is deemed violative of due process, and must be declared invalid.

214. Here, the Statute is arbitrary and capricious at its core, and in virtually all of its in particulars.

215. Specifically, the Statute:

a. Arbitrarily sets a population threshold of 200,000 that has no rational relationship to the purpose of the Statute and excludes similarly situated municipalities whose state school funds have been reduced in an even greater proportion, some dramatically so, so that the population level and other criteria chosen by the Legislature do not constitute a rational distinction.

b. Arbitrarily sets a minimum median household income threshold that has no rational relationship to the purpose of statute; thus inherently contravenes Abbott; and effectively excludes similarly situated or more applicable municipalities and municipalities with lower median household incomes that presumptively are in greater need of State school aid.

c. Arbitrarily sets population and median household classifications that, read together, have the effect of creating a class of one (Jersey City) that is irrational and excludes other municipalities in greater need of school aid.

d. Of the two cities covered by the payroll tax law, arbitrarily favors the wealthier one when the only 'saving' justification for the statute in Jersey City v. Farmer was Newark's poverty, allowing such a unique tax.

e. Arbitrarily requires dedication of payroll taxes of the covered municipality (Jersey City) for school purposes rather than general municipal purposes.

f. Arbitrarily creates provisions at odds with Abbott-approved SFRA provisions that the Legislature has neither repealed nor amended.

g. Arbitrarily ignores a well-established body of New Jersey Constitutional, New Jersey Supreme Court, and constitutionally-connected statutory law that prescribes how school aid funds should be raised, calculated, and distributed.

h. Arbitrarily discriminates between residents and non-residents in general.

i. Arbitrarily favors residents who benefit from the tax, while adversely affecting non-residents who do not benefit from the tax.

j. Arbitrarily applies, in overbroad fashion, to Jersey City "supervisors" of employee, and to putatively related payroll. The Statute thus arbitrarily applies to payrolls of employees in another county, another state, or even another country who have no relationship to the purpose of the Statute and no reasonable relationship to the proper funding of Jersey City schools.

k. Arbitrarily excludes (from computation of the Tax) insurance companies formed by authority of another state or foreign county, even if they have a large presence in the City. The Ordinance's stated distinction purportedly justifying this non-uniformity of the Tax itself is irrational.

l. Arbitrarily benefits Jersey City at the expense of similarly situated or more qualified municipalities.

m. Arbitrarily raises much more money in 'year one' than is necessary to replace any loss in State aid, and intentionally creates a budgetary surplus; in violation of the intent of Abbott and other applicable law.

n. Arbitrarily expands municipal extraterritoriality, in terms of both geographical and functional scope, well beyond accepted powers of a municipality; and does so in order to achieve the Abbott 'end run' noted, rather than for any reasoned purpose, and in violation of the following principles:

(i) Municipalities have only limited jurisdiction. Absent the most extraordinary of circumstances, the jurisdiction of municipal corporations lawfully ends at the municipal boundaries; and even when extended for a finite reason, involves very limited steps proportionate to the impact of remote operations on the municipality, and never the power to tax the payroll of "brick and mortar" operations beyond its borders and thereby "raid" the economic activities within a remote municipality.

(ii) Allowing the City to tax the payroll of employees who work in another city, state, or country violates these principles, proper apportionment, and the Constitutional provisions that mandate their application. Not only was the Legislature's decision to allow the City to act in this way arbitrary and capricious, and not only does its interstate application violate the federal Commerce Clause; but even intrastate (within New Jersey), the Tax is arbitrary and violates the guarantees of due process and equal protection under the New Jersey Constitution. See Greenberg v. Kimmelman, 99 N.J. 552, 568 (1985).

(iii) The payroll tax "coordination" provision of the Ordinance does nothing to rescue the Ordinance from being arbitrary, because [a] it does not constitute the lawfully required

"apportionment"; and [b] all other municipalities save one (Newark) are forbidden to have payroll taxes under the Act, and thus have to raise taxes in other ways on persons and entities who reside in those other municipalities. Therefore, the entities operating within those remote municipalities who also have a presence in Jersey City are being subjected to [a] local taxes of whatever nature necessary to pay for local schools and services in those remote municipalities, **and** [b] the payroll tax flowing to Jersey City from the brick-and-mortar activities in those remote jurisdictions.

(iv) The location in Jersey City (to an unspecified degree) of a "supervisor" (of an unspecified type), with unspecified levels of "supervision", is an arbitrary basis for taxing the actual commercial activities occurring in different cities, states, countries or continents, especially given the limited nature of municipal powers and the non-existent or extremely attenuated effect (if any) of those remote brick-and-mortar operations on Jersey City. By contrast, those remote activities have a direct connection to the municipalities and areas in which they are occurring, which has a right to tax them and does so, whether precisely in the form of a payroll tax (which New Jersey municipalities cannot do in any event) or with some substitute tax. Either way, there is a real financial effect from each tax upon the party being taxed, or in this case being taxed by two different jurisdictions, one having no valid connection to the taxpayer's activities in the remote municipality. Even if arguendo the remote jurisdiction chose not to tax its own local brick-and-mortar activities, it has the sole power to do so; Jersey City cannot be invested with that power. Thus, the Statute's structure is impermissible, unconstitutional and arbitrary. This would be true standing alone, and *a fortiori* in connection with the raising of revenues for a thorough and efficient education for a particular New Jersey municipality's schoolchildren.

(v) No measure of apportionment can satisfy the constitutional standard if the measure of tax is made to depend upon a factor which bears no fair relationship to the proportion of the taxed activity actually taking place within the taxing jurisdiction.

216. These principles are all violated by the Tax *sub judice*.

217. The arbitrary and capricious irrationality of the Statute is reflected in a number of other ways. For example (as noted), the "Supervisor" definition in the Statute purports to enhance locally-taxable payroll to include salary for all employees worldwide who are "supervised" by a "Supervisor" who happens to have a Jersey City location. If the "Supervisor" works in Jersey City (in some sense) and has one thousand people worldwide under his/her "supervision", then that entire one thousand employee contingent (and one more--the Supervisor too) is taxable. However, if the "Supervisor's" office is one mile outside of Jersey City, or his/her Jersey City services do not meet the vague threshold for 'coverage', then that entire one thousand person out-of-jurisdiction contingent is not part of the taxed payroll. This cannot be legitimately justified.

218. The arbitrariness of the Statute specially favoring Jersey City can also be discerned from the Sweeney Letter, and from the following:

a. Jersey City is already artificially favored by receiving a disproportionately huge percentage of its school budget in the form of state aid, about 60%, even though it has a much higher median income ($62,739) than many other municipalities receiving far lesser funding.

b. In 'year one' of the current round of cuts, the cuts in State aid to Jersey City represent only a .0.85% reduction in its State Aid, which still means it is receiving about 60% of its school budget from the State. Even in year two (i) the State is funding about 55% of Jersey City's school budget, and (ii) Jersey City is refraining from taxing its extremely substantial tax base to fund the rest of the proportionately small budget shortfall.

c. Meanwhile, other New Jersey municipalities that do not receive such enormous funding from the State, or anything close, are suffering much greater proportional cuts to State Aid, such as Lakewood Township (with a population of 100,000) suffering a 5.36% reduction despite

having a median income ($41,527) substantially less than Jersey City's; or to pick another example, Glassboro, a somewhat smaller municipality of 20,000, suffering an 10.96% reduction.

d. Because Jersey City gets the most State aid on a *pro rata* basis, if follows that the money paid for statewide taxes, part of which is earmarked for education, disproportionately benefits Jersey City.

e. Thus, there is no rational basis for singling out Jersey City to benefit from this special legislation. Indeed, this classification is dramatically less justifiable than those in the multiple cases that have struck down other special legislation.

219. For these reasons, the Statute should be invalidated as arbitrary and capricious.

WHEREFORE, plaintiffs demand judgment against the State of New Jersey as follows:

A. Declaring that the Statute is arbitrary and capricious;

B. Entering an Order temporarily, preliminarily, and permanently enjoining implementation and enforcement of the Statute;

C. For compensatory damages, to the extent quantifiable;

D. Awarding attorney's fees, interest, and costs of suit; and

E. Providing for such other and further relief as the Court deems equitable, appropriate, and just, including a tolling or extension of the 20-day time period for filing a petition under the applicable Initiative and Referendum statute, N.J.S.A. 40:69A-185.

COUNT XI
(Arbitrary and Capricious Ordinance)

220. Plaintiffs repeat all the above allegations as if set forth at length herein.

221. Under New Jersey law, an ordinance cannot stand, and must be declared invalid, if it is arbitrary and capricious. This is true regardless and independent of any constitutional analysis.

222. Here, the Ordinance is arbitrary and capricious at its core, and in virtually all of its in particulars.

223. Specifically, the Ordinance:

a. Arbitrarily discriminates between residents and non-residents.

b. Arbitrarily favors residents who benefit from the Tax, while adversely affecting non-residents who do not benefit from the Tax.

c. Arbitrarily applies in overbroad fashion to (and arising from) Jersey City "supervisors" of employees; the Ordinance thus arbitrarily applies to payrolls of employees in another county, another state, or even another country who have no relationship to the purpose of statute and no reasonable relationship to the proper funding of Jersey City schools.

d. Arbitrarily excludes insurance companies formed by authority of another state or foreign country from computation of the Tax (arbitrary as noted above).

e. Arbitrarily defines "employees", "services" and "independent contractors".

f. Arbitrarily imposes significant penalties for violation of an Ordinance that is vague and ambiguous.

g. Arbitrarily delegates administration of the Tax without specific direction.

h. Arbitrarily creates a burdensome and unworkable mechanism for resolving disputes with other municipalities regarding application of multiple payroll taxes to particular employees.

i. Is arbitrarily extraterritorial and not properly apportioned.

224. The arbitrary and capricious irrationality of the Ordinance is reflected in a number of ways, beyond just the resident/non-resident distinction. For example, the "Supervisor" definition in the Ordinance, which purports to enhance locally-taxable payroll to include salary for all employees worldwide who are "supervised" by a "Supervisor" who happens to have a Jersey City location. If the "Supervisor" works in Jersey City and has one thousand people worldwide under his/her "supervision", then that entire one thousand employee contingent (and one more--the Supervisor too)

is taxable. However, if the "Supervisor's" office is one mile outside of Jersey City, or his/her services do not meet the vague threshold for 'coverage', then that entire one thousand person out-of-jurisdiction contingent is not part of the taxed payroll. This cannot be legitimately justified.

225. For these reasons, the Ordinance should be invalidated as arbitrary and capricious.

WHEREFORE, plaintiffs demand judgment against the municipal defendants as follows:

A. Declaring that the Ordinance is arbitrary and capricious;

B. Entering an Order temporarily, preliminarily, and permanently enjoining implementation and enforcement of the Ordinance;

C. For compensatory damages, to the extent quantifiable;

D. Awarding attorney's fees, interest, and costs of suit; and

E. Providing for such other and further relief as the Court deems equitable, appropriate, and just, including a tolling or extension of the 20-day time period for filing a petition under the applicable Initiative and Referendum statute, N.J.S.A. 40:69A-185.

COUNT XII
(Rights of Cal-Harbor and H.P. Roosevelt Urban Renewal Entities)

226. Plaintiffs repeat all the above allegations as if set forth at length herein.

227. Cal-Harbor Urban Renewal Entities and H.P. Roosevelt (collectively, the "Urban Renewal Entity(s)") are "redevelopers" of office/commercial/residential projects in the City, as that term is defined in the Local Redevelopment and Housing Law, P.L. 1992, c. 79 (C. 40A:12A-1 et seq.), and non-profit entities as defined in the Long Term Tax Exemption Law, P.L. 1991, c. 431, §1 (C. 40A:20-1 et seq.), effective April 16, 1992 (the "LTTE Law").

228. The Urban Renewal Entities and/or their affiliated entities are employers as that term is used in the Ordinance.

229. The Urban Renewal Entities were formed to assist the City to provide for clearance, replanning, development, and redevelopment of blighted areas pursuant to Article VIII, Section III, Paragraph 1 of the New Jersey Constitution.

230. As an inducement for the Urban Renewal Entities to make the investment in the City and in order to assist the City in effectuating the public purpose of the elimination of blighted conditions and the restoration of deteriorated or neglected properties to a beneficial use, the City and the Urban Renewal Entities entered into special financial arrangements, including the granting of property tax exemptions with respect to the land and buildings, structures, infrastructure and other valuable additions and the amelioration of land that constitutes improvements to blighted conditions, which tax exemption and special financial arrangements are authorized by the LTTE Law.

231. The special financial arrangements authorized by the LTTE Law are in the form of a Financial Agreement that contains a detailed methodology for calculating the Annual Service Charges commonly known as payments in lieu of taxes ("PILOTs"), which the Urban Renewal Entities formed thereunder must pay annually to the City during the term of the tax exemption, whether based upon a percentage of the total project cost or a percentage of the annual gross revenue generated by the projects, as those terms are defined in the LTTE Law. In addition thereto, the City is delegated the authority to assess an annual Administrative Fee, not to exceed two percent of the Annual Service Charge.

232. Except for the authorization for a municipality to require that the Urban Renewal Entities granted a tax exemption under the LTTE Law set aside affordable residential units (or contribute to an affordable housing trust fund established by the municipality for the construction or rehabilitation of low and moderate income housing) pursuant to P.L. 2003, c. 125, §1 (C. 40A:12A-4.1), effective July 9, 2003, the annual PILOTs and annual Administrative Fees authorized by the LTTE Law are intended to be the exclusive method by which the Urban Renewal Entities compensate

municipalities for being granted the tax exemption embodied by Article VIII, Section III, Paragraph 1 of the New Jersey Constitution.

233. N.J.S.A. 40A:20-12 provides that tax exemptions granted pursuant to P.L. 2003, c. 125 (C. 40A:12A-4.1 et al.) represent long-term financial agreements between a municipality, such as the City, and the Urban Renewal Entity, which constitute "a single continuing exception from local property taxation for the duration of the Financial Agreement." Together the Annual Service Charge to be paid to the City during the term of the exemption and the Administrative Fee not to exceed two percent of the Annual Service Charge are intended to be lieu of any other taxes to be paid on the buildings and improvements of the redevelopment project and, to the extent authorized by the LTTE Law, on the land.

234. In addition to the payment of the Annual Service Charge and the Administrative Fee, the Urban Renewal Entities must agree to a limitation of profits as specified in the LTTE Law as a condition of receiving the tax exemption. N.J.S.A. 40A:20-15.

235. Except as to the fees authorized by the LTTE Law and the Local Housing and Redevelopment Law, no other taxes, fees or charges may be imposed by a municipality on an Urban Renewal Entity without violating the tax exemption authorized by the New Jersey Constitution.

236. a. An amendment to the LTTE Law provides that any Financial Agreement entered into between a municipality and an Urban Renewal Entity on or after the effective date of P.L. 2003, c. 125 (C. 40A:12A-4.1, et al.), shall provide that five percent of the Annual Service Charge collected by the municipality shall be remitted to the County in accordance with the provisions of N.J.S.A. 54:4-74.

b. Unlike non-exempt ad valorem taxes, there is no provision in the LTTE Law that either mandates or prohibits the remitting of any monies from an Urban Renewal Entity to a

school district for the use of public education. Jersey City has chosen not to share such monies with its Board of Education.

237. The City has granted tax exemptions to the Urban Renewal Entities, which are non-profit entities formed for the purpose of assisting the City with its redevelopment of blighted areas pursuant to Article VIII, Section III, Paragraph 1 of the New Jersey Constitution, in return for which the Urban Renewal Entities agreed to a limitation on profits and the payment of the Annual Service Charges, Administrative Fees and Affordable Housing Trust Fund Payments as the exclusive means of compensating the City for municipal services pursuant to the LTTE Law.

238. Each of the Urban Renewal Entities has entered into a Financial Agreement with the City that incorporates the terms, conditions and limitations of the LTTE Law.

239. The City has accepted and received all of the redevelopment benefits and the compensation from the Urban Renewal Entities authorized by the LTTE Law and Redevelopment Law and is continuing to receive such compensation and benefits.

240. Notwithstanding the tax exemption accorded to the Urban Renewal Entities and the public purpose and benefits received by the City, the City has determined to include non-profit entities such as the Urban Renewal Entities in its expanded definition of "employer" under the Ordinance and to subject the Urban Renewal Entities to the 1% payroll tax set forth therein to be collected for the benefit of Jersey City Public Schools.

241. The Ordinance's assessment of the payroll taxes against the Urban Renewal Entities payroll or allocated payroll violates the exemption from taxes and the limitation on payments in lieu of taxes authorized by Article VIII, Section III, Paragraph 1 of the New Jersey Constitution and the LTTE Law.

242. As applied to the Urban Renewal Entities, the assessment of the 1% payroll tax for the benefit of Jersey City Public Schools constitutes an illegal effort to increase in "lieu of tax" payments

paid by the Urban Renewal Entities to the City in violation of the New Jersey Constitution and the LTTE Law.

243. The Urban Renewal Entities have been harmed and aggrieved by the Ordinance.

WHEREFORE, the Urban Renewal Entities plaintiffs demand judgment against the municipal defendants as follows:

A. Declaring that the imposition of a payroll tax under City Ordinance 18-133 as to the Urban Renewal Entities violates Article VIII, Section III, Paragraph 1 of the New Jersey Constitution and the LTTE Law;

B. Declaring that the imposition of a payroll tax under City Ordinance 18-133 as to the Urban Renewal Entities constitutes a breach of the Financial Agreements between the Urban Renewal Entities and the City of Jersey City;

C. Entering an Order temporarily, preliminarily, and permanently enjoining implementation and enforcement of the Ordinance;

D. For compensatory damages, to the extent quantifiable;

E. Awarding attorney's fees, interest, and costs of suit; and

F. Providing for such other and further relief as the Court deems equitable, appropriate, and just, including a tolling or extension of the 20-day time period for filing a petition under the applicable Initiative and Referendum statute, N.J.S.A. 40:69A-185.

COUNT XIII
(Violation of PILOT Agreements)

244. Plaintiffs repeat all the above allegations as if set forth at length herein.

245. The Mack-Cali Plaintiffs are parties to PILOT Agreements with Jersey City, by which they are insulated from any further municipal taxes.

246. H.P. Roosevelt also has such a PILOT Agreement with Jersey City.

247. The PILOT Agreements provide for payment by the developer of (a) Annual Services Charges and administration fees pursuant to the LTTE Law, the payment of excess profits, if applicable, and taxes which are credited against the PILOTS, and (b) other compensation in specific instances. No right to assess other taxes, such as the 1% payroll tax, was reserved by the City in the PILOT Agreements. The City thus lacks that right.

248. The Enactments would unlawfully impose additional taxes on the Mack-Cali Plaintiffs and H.P. Roosevelt, in violation of the PILOT Agreements.

WHEREFORE, the Urban Renewal Entities plaintiffs demand judgment against the municipal defendants as follows:

A. Declaring that the imposition of a payroll tax under City Ordinance 18-133 as to the Urban Renewal Entities violates the parties' PILOT Agreements;

B. Entering an Order temporarily, preliminarily, and permanently enjoining implementation and enforcement of the Ordinance;

C. For compensatory damages, to the extent quantifiable;

D. Awarding attorney's fees, interest, and costs of suit; and

E. Providing for such other and further relief as the Court deems equitable, appropriate, and just, including a tolling or extension of the 20-day time period for filing a petition under the applicable Initiative and Referendum statute, N.J.S.A. 40:69A-185.

COUNT XIV
(Unconstitutional Impairment of PILOT Agreements under the New Jersey Constitution)

249. Plaintiffs repeat all the above allegations as if set forth at length herein.

250. The Enactments would impair the rights of the Mack-Cali Plaintiffs and H.P. Roosevelt under the PILOT Agreements, in violation of Article IV, Section VII, Paragraph 3 of the New Jersey Constitution.

251. The Enactments are therefore unenforceable with regard to the Mack-Cali Plaintiffs' and H.P. Roosevelt's PILOT Agreements.

WHEREFORE, the Urban Renewal Entities plaintiffs demand judgment against the municipal defendants as follows:

A. Declaring that the imposition of a payroll tax under City Ordinance 18-133 as to the Urban Renewal Entities impairs the rights of the Urban Renewal Entities under the PILOT agreements in violation of Article IV, Section VII, Paragraph 3 of the New Jersey Constitution;

B. Entering an Order temporarily, preliminarily, and permanently enjoining implementation and enforcement of the Ordinance;

C. For compensatory damages, to the extent quantifiable;

D. Awarding attorney's fees, interest, and costs of suit; and

E. Providing for such other and further relief as the Court deems equitable, appropriate, and just, including a tolling or extension of the 20-day time period for filing a petition under the applicable Initiative and Referendum statute, N.J.S.A. 40:69A-185.

COUNT XV
(Declaratory Judgment)

252. Plaintiffs repeat all the above allegations as if set forth at length herein.

253. An actual controversy exists among the parties as to their respective rights and responsibilities under and in light of the Enactments, the PILOT Agreements, and related matters.

254. Each of plaintiffs' claims in this Complaint warrants declaratory relief, for the reasons explained in each such Count.

255. Moreover, the Ordinance is too vague to be safely complied with, even if *arguendo* it were valid.

A. Declaration Needed Due to Invalidity of Enactments

256. The invalidity of the Statute and Ordinance should be declared by this Court, in accordance with the foregoing Counts, due to (a) the unsettled nature and importance of the rights affected, and (b) the effect on the parties and on non-parties.

257. More specifically, as to each Constitutional provision and other controlling legal principle cited in the foregoing Counts, there should be a separate declaration of invalidity.

B. Declaration Needed due to Vagueness of Ordinance

258. The Ordinance contains so many ambiguities that an entity purportedly subject to the Ordinance would have to guess and speculate as to how to comply. The subjects of such speculation would include:

a. Are those Ordinance categories that go beyond the Statute enforceable?

b. Who is an "employee" within the meaning of the Ordinance?

c. Precisely which independent contractors are covered?

d. Who is actually a "supervisor" that can exponentially increase the worldwide payroll subject to the tax? What precise connection does that person 'need' to Jersey City? As noted, this vagueness and ambiguity would, for example, place MCRC at grave risk of calculating a correct "supervisor" tax from its worldwide payroll.

e. What level of "supervision" triggers coverage of precisely which remote employees?

259. For these same reasons (as noted in the Counts above), the Ordinance is substantively unenforceable. However, if *arguendo* otherwise valid, the Ordinance would still be too vague and ambiguous to be enforceable. Alternatively, the Ordinance could not lawfully be applied until it is properly interpreted by this Court.

260. Due to the Ordinance's vagueness and ambiguities, this Court's intervention is crucial because of the severity of (a) the penalties, interests, and other charges, and (b) other ways where the business entity could be placed at risk, for not having complied with an ambiguous statute.

C. Other Declarations Needed.

261. Further declarations are sought consistent with each of the foregoing Counts. Without limitation, declaratory judgment should be entered that defendants Mauer and Platt may not take steps to enforce the Ordinance.

WHEREFORE, plaintiffs demand judgment against defendants as follows:

A. Rendering the declarations set forth in the "WHEREFORE" clauses of the prior Counts;

B. Awarding attorney's fees, interest, and costs of suit; and

C. Providing for such other and further relief as the Court deems equitable, appropriate, and just; including but in no way limited to a tolling or extension of the 20-day time period for filing a petition under the applicable Initiative and Referendum statute, N.J.S.A. 40:69A-185.

R. 4:5-1 CERTIFICATION

The undersigned is aware of no pending litigation or arbitration matter relating to the subject matter of this case. Furthermore, the undersigned is aware of no parties who should be added at this time, while noting that additional aggrieved parties may well add as plaintiffs in this or other actions.

R. 4:69-4 CERTIFICATION

To the extent relevant, the videotapes of the proceedings before the City Council are available to plaintiffs, with arrangements made for their transcription.

Respectfully submitted,

WEINER LAW GROUP LLP
Attorneys for Plaintiffs

Dated: December 11, 2018

By: _____
Clark E. Alpert

VERIFICATION

I am the Chief Executive Officer of plaintiff Mack-Cali Realty Corp. I hereby certify that the facts set forth in the accompanying Verified Complaint are true and accurate based upon my first-hand knowledge, except as to those allegations recited upon information and belief or as a matter of public record or from co-parties.

Dated: December 11, 2018

MICHAEL J. DEMARCO